

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

1.	TOMMY WELLS, JR.	§	
	and	§	
2.	CHERYL WELLS	§	
		§	
	Plaintiff	§	
		§	
v.		§	CIVIL ACTION NO. 9:00CV142
		§	
1.	NACOGDOCHES COUNTY, TEXAS	§	JUDGE COBB
	and	§	
2.	EDWARD THORNTON	§	
		§	
	Defendants	§	

**PLAINTIFFS' RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I

Introduction

Plaintiffs Tommy and Cheryl Wells were arrested and hauled off to jail on the basis of criminal complaints filed by Nacogdoches County Heath & Environmental Services Administrator Edward Thornton. Plaintiffs sued Defendant Thornton because their arrests were unlawful; Defendant Thornton maliciously prosecuted them; and Defendant Thornton tortiously interfered with a business relationship. Plaintiffs sued Defendant Nacogdoches County because Defendant Thornton is Defendant Nacogdoches County's ultimate repository of authority concerning what action, if any, to take against trailer park owners involved in disputes with Nacogdoches County.

Both defendants filed a motion for summary judgment. Plaintiffs will demonstrate below that the motion for summary judgment is without merit.

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II

Issues Presented

1. Whether the arrests of plaintiffs were lawful.
2. Whether Defendant Thornton maliciously prosecuted the plaintiffs.
3. Whether Defendant Thornton tortiously interfered with plaintiffs' business relationship.
4. Whether Defendant Nacogdoches County is jointly liable for the unlawful arrests.

III

Documents Relied On

- Plaintiffs' Exhibit 1: Affidavit of Tommy Wells
- Plaintiffs' Exhibit 2: Affidavit of Cheryl Wells
- Plaintiffs' Exhibit 3: Deposition of Tommy Wells [excerpts]
- Plaintiffs' Exhibit 4: Deposition of Cheryl Wells [excerpts]
- Plaintiffs' Exhibit 5: Deposition of Edward Thornton [excerpts]
- Plaintiffs' Exhibit 6: *State of Texas v. Cheryl Wells*, Cause No. 99-12-2993, Order of Dismissal [Bates No. 2]
- Plaintiffs' Exhibit 7: *State of Texas v. Tommy Wells*, Cause No. 99-12-2992, Order of Dismissal [Bates No. 3]
- Plaintiffs' Exhibit 8: Affidavit of Danny Simmons
- Plaintiffs' Exhibit 9: Affidavit of Michael Porter

IV

Facts

A. Tommy Wells

1. Affidavit

Plaintiff Tommy Wells testified by Affidavit that he and his wife owned a trailer park in Nacogdoches County. (Pl. Ex. 1, §II). A corporation was set up to run the trailer park, but the Wells still own the land. (Pl. Ex. 1, §II).

Mrs. Wells was listed as the CEO of the corporation. However, Mr. Wells actually ran the trailer park and made the decisions regarding the trailer park. Mrs. Wells had very little to do with it. (Pl. Ex. 1, §III). Mr. Wells specifically asked Defendant Thornton not to tell Mrs. Wells about the problems at the trailer park and Defendant Thornton, to his credit, agreed not to tell her. (Pl. Ex. 1, §XXVIII).

Mr. Wells originally planned to install a wetlands septic system for the trailer park. (Pl. Ex. 1, §IV). However, this became economically impossible when the original estimate was changed from \$60,000 to \$150,000. (Pl. Ex. 1, §IV). Mr. Wells was in the process of designing and permitting the wetlands when his engineer, who was partially paid, quit. (Pl. Ex. 1, §V). This caused severe problems because Mr. Wells was already leasing lots. (Pl. Ex. 1, §V).

Mr. Wells discussed with Defendant Thornton the fact that the law allows a landowner to install septic systems. (Pl. Ex. 1, §VI).

Defendant Thornton gave Mr. Wells permission to install temporary septic systems until the aerobic systems could be installed. (Pl. Ex. 1, §VII). Defendant Thornton approved each of the septic tanks when they were installed. (Pl. Ex. 1, §VII).

Defendant Thornton and his assistant began harassing Mr. Wells for no good reason. (Pl. Ex. 1, §VII). For example, Mr. Wells was first told that the septic system could not exceed 5000 gallons after he had already installed a system that exceeded 5000 gallons. (Pl. Ex. 1, §VII). Simply put, Mr. Wells' hands were tied because Defendant Thornton changed the rules of the game after tenants were already in the trailer park (Pl. Ex.1, §§VII & X) when he abruptly reversed himself and would no longer allow additional work on the septic tanks. (Pl. Ex. 1, §VII). Defendant Thornton exacerbated the problem by not giving Mr. Wells permission to get anything done. (Pl. Ex. 1, §VII).

A tenant's toilet overflowed about a week before the Wells were arrested. Mr. Wells took immediate care of the problem, but in the meantime the yard was saturated (Pl. Ex.1, §§XI & XII).

Most of the problems were caused by the tenants themselves. One of the main problems was that the tenants would turn off the sprinkler heads. (Pl. Ex. 1, §XIX).

Lloyd Plunkett's Affidavit refers to Lou Marshall's yard being covered with human waste and stinking. Mr. Wells tried to find out where the leak was coming from. It turned out that the leak was coming from Mr. Marshall's trailer over which Mr. Wells had no control. (Pl. Ex. 1, §XIV).

Tenant Daniels' problems were caused by the fact that she clogged up her pipe trying to flush tampons. (Pl. Ex. 1, \$XV).

Tenant Brook's problem was caused when he ran over a sprinkler head with his lawn mower. (Pl. Ex. 1, \$XVI). Mr. Wells also unclogged his pipes several times because Tenant Brooks tried to flush items that could not be flushed. (Pl. Ex. 1, \$XVI).

Tenant Dixon's main problem was that she would cap off her sprinklers without anyone's permission. (Pl. Ex. 1, \$XVII).

Tenant Frazier's problem was caused by licenced installer Kevin Dillon and Mr. Wells corrected the problem as soon as he learned about it. (Pl. Ex. 1, \$XVIII).

Defendant Thornton prepared and filed separate criminal complaints against both Mr. & Mrs. Wells on November 8, 1999. (Pl. Ex. 1, \$XXI). Defendant Thornton filed additional complaints on December 10, 1999 against Mr. Wells. (Pl. Ex. 1, \$XXI). All of the complaints contained material false information and an arrest warrant would not have been issued but for the material false information. (Pl. Ex. 1, \$XXII & XXIII).

The Wells were arrested in front of their children on December 19, 1999 and their arrests appeared on the front page of the Nacogdoches Daily Sentinel. (Pl. Ex. 1, \$XXIV & XXV). The negative publicity ruined the business and dried up Mr. & Mrs. Wells' credit, forcing them to file bankruptcy. (Pl. Ex. 1, \$XXV).

Defendant Thornton maliciously prosecuted Mr. and Mrs. Wells. (Pl. Ex. 1, \$XXVI). It is undisputed that the criminal charges

filed against Mr. & Mrs. Wells were dismissed on May 2, 2000. (Pl. Ex. 1, §XXVII).

The State of Texas later filed a civil suit in connection with the trailer park, and Mr. Wells believes that this is how the situation should have been taken care of in the first place. (Pl. Ex. 1, §XXVII).

2. Deposition

Mr. Wells confirmed at his deposition that he had received Defendant Thornton's permission to install the temporary systems. (Tommy Wells depo p. 72, ln. 7-13). Mr. Wells started installing septic tank systems after he talked to Defendant Thornton. (Tommy Wells depo p. 71, ln. 18-23). Defendant Thornton knew that Mr. Wells was installing temporary systems until the aerobic systems were installed. (Tommy Wells depo p. 83, ln. 11 thru p. 84, ln. 4).

In September of 1998 Defendant Thornton's assistant, Benny Serrano, told Mr. Wells for the first time that he would have to bring the trailer park up to state standards before other people could move in. (Tommy Wells depo p. 86, ln. 22 thru p. 87, ln. 2). Mr. Wells altered some systems installed by a licensed installer with the consent of Defendant Thornton who told him that he could take some of the sprinklers off of the system because the system had more sprinklers than was necessary. (Tommy Wells depo p. 101, ln. 14 thru p. 102, ln. 1). Later, Mr. Wells was told for the first time - after the work was already done and the trailers were already in - of the 5000 gallon rule. (Tommy Wells depo p. 104, ln. 24 thru p. 105, ln. 1).

There were more aerobic systems hooked up to the trailers than the system was designed to handle. (Tommy Wells depo p. 106, ln. 20-23). However, the reason there were more trailers on the aerobic system than it was designed for was because of the recently imposed 5000 gallon limitation. (Tommy Wells depo p. 108, ln. 19-21).

Mr. Wells never pumped raw sewage. (Tommy Wells depo p. 118, ln. 5-9). Mr. Wells did receive a complaint in December of 1999 about a plastic pipe pumping effluent into a ditch. (Tommy Wells depo p. 107, ln. 2-6). However, it was not pumping raw effluent but was pumping water from the aerobic system that had been through the treatment process. (Tommy Wells depo p. 107, ln. 11 thru p. 108, ln. 11). The plastic pipe was installed for drainage problems and Mr. Wells was not aware that he was not supposed to pump treated water. (Tommy Wells depo p. 108, ln. 4-15).

Defendant Thornton took samples after the January 2000 arrest when there began to be more complaints. (Tommy Wells depo p. 109, ln. 7-14). Mr. Wells was aware of the fact that the samples that were taken in March of 2000 came back bad because he had not serviced the systems at all following his December arrest because **Defendant Thornton specifically told Mr. Wells after he was arrested not to work on the septic tanks.** (Tommy Wells depo p. 110, ln. 5 thru p. 112, ln. 16; p. 143, ln. 7-25). Mr. Wells later began servicing the systems again because he was tired of waiting for something to be worked out. (Tommy Wells depo p. 112, ln. 19-21).

Pumping sewage from the septic tank to the ditch is ok if the water is properly treated. (Tommy Wells depo p. 120, ln. 18-25).

B. Cheryl Wells

1. Affidavit

Cheryl Wells' affidavit is very similar to her husband's affidavit. (Pl. Ex. 2, §§II-VI). Mrs. Wells specifically confirmed that she knew nothing about her husband's agreement with Defendant Thornton and that her involvement in the trailer park was very limited. (Pl. Ex. 2, §III). She also believes that this situation should have been handled with a civil suit, rather than criminal charges, in the first place. (Pl. Ex. 2, §VI).

2. Deposition

Mrs. Wells was technically CEO of the corporation. (Cheryl Wells depo p. 7, ln. 13-23). However, she got pregnant and was not involved in the inner workings of the business. (Cheryl Wells depo p. 8, ln. 4-18). Mr. Wells handled the finances and she helped when she could. (Cheryl Wells depo p. 10, ln. 17-19).

Mrs. Wells was only vaguely aware of the problems with the septic systems. (Cheryl Wells depo p. 14, ln. 3-6). She very rarely went on the property and never saw effluent. (Cheryl Wells depo p. 38, ln. 10-14).

Mrs. Wells' children were 6, 4 and 9 months. (Cheryl Wells depo p. 18, ln. 19-20). Mrs. Wells was taken to the police station where she was fingerprinted, mugshot, and put in a cell. (Cheryl Wells depo p. 19, ln. 15 thru p. 20, ln. 24). She was very uncomfortable and her clothes got wet because she was breast

feeding and was not allowed breast feed in the jail. (Cheryl Wells depo p. 21, ln. 2-15). She left the jail after one of her parents paid bail, although Mr. Wells did not get out until several hours later. (Cheryl Wells depo p. 22, ln. 9-17). She believes that her screaming infant made the process quicker. (Cheryl Wells depo p. 22, ln. 18-24).

Mrs. Wells only received one letter from Defendant Thornton before her arrest. (Cheryl Wells depo p. 34, ln. 3-8). Mrs. Wells did not call Defendant Thornton because her husband was handling it. (Cheryl Wells depo p. 34, ln. 12-23).

The Wells' financier got scared and pulled out after the arrests. (Cheryl Wells depo p. 41, ln. 9-15). Unfortunately, by this time the Wells had already made promises that they could no longer keep. (Cheryl Wells depo p. 42, ln. 1 thru p. 43, ln. 8).

C. Employee Simmons' Affidavit

Mr. Simmons worked for Mr. Wells at the trailer park from the summer of 1998 through the summer of 1999. (Pl. Ex. 8, §II). Mrs. Wells had very little to do with the trailer park. (Pl. Ex. 8, §III). Employee Simmons also confirmed that Mr. Wells' had Defendant Thornton's permission to install the systems. (Pl. Ex. 8, §§IV & V).

Defendant Thornton knew that Mr. Wells had permits for some of the systems. (Pl. Ex. 8, §V). Further, Defendant Thornton knew that Mr. Wells was pumping water from the septic tank into the aerobic system because Defendant Thornton saw Mr. Wells do it. (Pl. Ex. 8, §VI). Finally, Employee Simmons confirmed that the Mr. Wells

always did his best to promptly respond to complaints. (Pl. Ex. 8, §VI).

D. Tenant Porter's Affidavit

Tenant Porter confirmed that Mr. Wells is a good man who runs a good trailer park. (Pl. Ex. 9, §§III-VII). Tenant Porter also confirmed that Mrs. Wells never worked at the trailer park. (Pl. Ex. 9, §VII).

E. Defendant Edward Thornton's Admissions

Defendant Thornton did not admit very much. However, Defendant Thornton did admit that he signed the criminal complaints, but at the same time denied that he had anything to do with getting the Wells arrested. (Thornton depo p. 5, ln. 1-18). Defendant Thornton signed the complaint in his capacity as Nacogdoches County Environmental Health Administrator. (Thornton depo p. 9, ln. 3 thru p. 10, ln. 5). He also admitted that full authority had been delegated to him by the Commissioners Court. (Thornton depo p. 10, ln. 6-10). The Commissioners Court specifically gave him full authority to decide whether or not to file criminal charges and the decision was left solely up to his good judgment and discretion. (Thornton depo p. 109, ln. 11-22).

Defendant Thornton admitted that he had no evidence that Mrs. Wells was guilty of any offense, other than the fact that she was the landowner. (Thornton depo p. 118, ln. 6-11). He further acknowledged that just because you are a landowner does not mean a charge is automatically filed. (Thornton depo p. 119, ln. 3-10).

Defendant Thornton knew that the Wells could be arrested as a result of his criminal complaint. (Thornton depo p. 18, ln. 3-9; p. 20, ln. 18-22; p. 22, ln. 7-9). Defendant Thornton thought the Sheriff would pick Mr. Wells up, arrest him, and take him before a judge. (Thornton depo p. 28, ln. 8-15). Defendant Thornton also knew that Mrs. Wells could be hauled off to jail because in his view as co-owner she was just as guilty as Mr. Wells. (Thornton depo p. 48, ln. 21-25). This was his view despite the fact that when he first met Mr. Wells, Mr. Wells told him that he was the owner of the property and not to bother his wife. (Thornton depo p. 49, ln. 15-21; p. 152, ln. 2-5).

Defendant Thornton denied knowing about Tenant Ford's broken toilet during the week of December 3, 1999. (Thornton depo p. 73, ln. 4-12). However, Defendant Thornton acknowledged that Mr. Wells had numerous problems with leaky and broken toilets.¹ (Thornton depo p. 74, ln. 1-5).

Defendant Thornton admitted that he had never met Mrs. Wells between July of 1998 and the time she was hauled off to jail in December of 1999. (Thornton depo p. 76, ln. 18-25). He also admitted that he knew Mr. Wells was calling the shots with regard to the trailer park. (Thornton depo p. 79, ln. 7-15).

Defendant Thornton admitted that neither his assistant nor anyone else ever indicated that Mrs. Wells knew anything at all about the pump. (Thornton depo p. 135, ln. 17-22; p. 154, ln. 17-

¹The leaky and broken toilets were not Mr. and Mrs. Wells' fault because it is undisputed that the Wells did not own the trailers.

20). Defendant Thornton also admitted that except for one letter in March 1999 [over eight months before the arrest] he never made any effort to contact Mrs. Wells about the problem. (Thornton depo p. 157, ln. 22 thru p. 158, l n. 2). Further, he did not give Mr. Wells any time to correct the last problem.² (Thornton depo p. 135, ln. 3-10).

The County Attorney told Defendant Thornton that he would have to drop the charges because they were deficient. (Thornton depo p. 143, ln. 5-20). Defendant Thornton reluctantly acknowledged that as a result of his charges a nice lady and her husband were taken to jail. (Thornton depo p. 144, ln. 10-17).

Defendant Thornton acknowledged that a number of trailer parks in Nacogdoches County had sewage problems. (Thornton depo p. 159, ln. 13-16).

Defendant Thornton acknowledged that nobody ever claimed that Mr. Wells' trailer park contaminated wells. (Thornton depo p. 170, ln. 8-19). He also admitted that he did not have a single documented case of illness caused by the trailer park. (Thornton depo p. 164, ln. 7-10).

Defendant Thornton acknowledged that he may have approved permits exceeding 5000 gallons.³ (Thornton depo p. 187, ln. 20 thru p. 188, ln. 1). He also admitted that at the time of installation he permitted the systems that he was claiming were not set up

²Standing water caused by the leaky toilet.

³The trailer park owner is supposed to obtain a permit before installing a septic tank system. The system is "permitted".

right. (Thornton depo p. 185, ln. 4-10). Finally, he admitted that he never tested for effluent prior to the arrest. (Thornton depo p. 183, ln. 5-12). Defendant Thornton admitted that he did not consider either plaintiff to be a flight risk at the time of the arrest. (Thornton depo p. 195, ln. 15-18). He also said that he did not contact either of the Wells on November 8, 1999 when he decided to file the first set of charges. (Thornton depo p. 200, ln. 17-20).

F. Dismissal of Charges

The charges were dismissed on May 2, 2001. See Plaintiffs' Exhibits 6 & 7.

V

Argument

A. Standard for Summary Judgment

Summary judgment is proper if there is no genuine issue of material fact and the moving party is entitled to summary judgment as a matter of law. Harper v. Harris County, 21 F.3d 597, 600 (5th Cir. 1994). This Court must first consult the applicable substantive law to determine the material factual issues. Id. The court must view the evidence bearing on those issues in the light most favorable to the non-movant. Id.

Pursuant to *Fed.R.Civ.P.* 56(c), summary judgment should be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." The

party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for his motion, and identifying those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," which he believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

The Court's inquiry in ruling on a motion for summary judgment "necessarily implicates the substantive evidentiary standard of proof that would apply at the trial on the merits." Anderson v. Liberty Lobby, 477 U.S. 242, 252 (1986). At the same time, the evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in her favor. Adickes v. S. H. Kress & Co., 398 U.S. 144, 158-59 (1970).

B. Arrests

1. Law

As our Supreme Court has succinctly stated:

No right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.

Terry v. Ohio, 392 U.S. 1, 9 (1968), quoting Union Pac. R. Co. v. Botsford, 141 U.S. 250, 251 (1891).

The right to be free from an unlawful arrest is guaranteed by the Fourth Amendment. Sorenson v. Ferrie, 134 F.3d 325, 328 (5th Cir. 1998).

The legality of a warrant is determined in light of the information available at the time the warrant is obtained. Maryland v. Garrison, 480 U.S. 79, 85-86, 107 S.Ct. 1013, 1017-18, 94 L.Ed.2d 72 (1987); Richardson v. Oldham, 12 F.3d 1373, 1381 (5th Cir. 1994).

It is well-established that a facially valid warrant may be invalid. Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978). A facially valid warrant is void when it is obtained on the basis of an affiant's false statement that is knowingly and intentionally made, or made with reckless disregard of the truth, if the false statement is necessary to the finding of probable cause. Id. at 155-156, S.Ct. at 2676; Husband v. Bryan, 996 F.2d 27, 30 (5th Cir. 1991).

An officer who submits a supporting affidavit to a judge that issues a warrant is liable "unless the officer has an objectively reasonable basis for believing that the facts alleged in his affidavit are sufficient to establish probable cause." Malley v. Briggs, 475 U.S. 335, 339, 106 S.Ct. 1092, 1095, 89 L.Ed.2d 271 (1986).

Simply put, an arrest is illegal if it is made without probable cause. Baker v. McCollum, 443 U.S. 137, 144-45 (1979).

Probable cause depends "upon whether, at the moment the arrest was made, . . . the facts and circumstances within [defendants'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the

[citizen] had committed or was committing an offense." Beck v. Ohio, 379 U.S. 89, 91 (1964).

2. Both Arrests Were Unlawful

The arrest of Mr. Wells is unlawful because it was not supported by probable cause. Assuming *arguendo* that the arrest of Mr. Wells was supported by probable cause, the arrest of Mrs. Wells was still unlawful because she had virtually nothing to do with the trailer park and the only "evidence" connecting Mrs. Wells with any crime is her co-ownership of the trailer park. Stated differently, Mrs. Wells' relationship with Mr. Wells provides absolutely no justification for her arrest, assuming *arguendo* that probable cause existed for the arrest of Mr. Wells.

Mr. Wells was the victim of an overzealous governmental official, Defendant Thornton, who converted an essentially civil dispute into the arrest of two innocent citizens. There is substantial evidence that Mr. Wells was doing what he had been given permission to do by Defendant Thornton and that Defendant Thornton changed the rules of the game after tenants had already moved into the trailer park. Defendant Thornton, by commanding Mr. Wells not to do any further work on the septic systems, doomed Mr. Wells to failure.

C. Tortious Interference with a Business Relationship

1. Law

Tortious interference with a business relationship is an intentional tort. Southwestern Bell Telephone Company v. John Carlo Texas, Inc., 843, S.W. 2nd 470, 471 (Tex. 1992). The victim

must prove four things. First, there must be a reasonable probability that he would have entered into the prospective relationship or contract without the interference. Second, the defendant's conduct must have been independently tortious or wrongful. Third, the defendant's misconduct must have resulted in actual harm to the plaintiff. Finally, the defendant's acts must be the proximate cause of the damages. Wal-Mart Stores, Inc. v. Struges, 44 F.Supp. Ct. J. 486-193 (March 8, 2001).

2. Defendant Thornton Tortiously Interfered with a Business Relationship

First, there is substantial evidence that the plaintiffs would have entered into prospective relationships and contracts without the interference. In fact, Mr. and Mrs. Wells were put out of business. Second, there is substantial evidence that Defendant Thornton's conduct was wrongful. Specifically, he filed trumped up charges against Mr. and Mrs. Wells who were hauled off to jail for no reason. Third, there is substantial evidence that Defendant Thornton's misconduct resulted in actual harm to Mr. and Mrs. Wells. Fourth, it is uncontroverted that Mr. and Mrs. Wells filed bankruptcy and there is substantial evidence that Defendant Thornton's misconduct was the cause of the bankruptcy. Finally, there is substantial evidence that Defendant Thornton's acts are a proximate cause of damages. Mr. and Mrs. Wells have been humiliated and embarrassed and lost their dream.

D. Malicious Prosecution

1. Law

A malicious prosecution victim must show the following:

1. That a criminal action was commenced against him;
2. That the prosecution was caused by Defendant or with his aid;
3. That the action terminated in the victim's favor;
4. That the victim is innocent;
5. That the Defendant acted without probable cause;
6. That the Defendant acted with malice; and
7. That the criminal proceeding damaged the victim.

Taylor v. Gregg, 36 F.3d at 455.

Malice may be inferred by proof of lack of probable cause.

Dahl v. Akin, 645 S.W.2d 515 (1982).

2. Law Applied to Facts

It is undisputed that a criminal action was commenced against Mr. and Mrs. Wells; the prosecution was caused by Defendant Thornton; the action terminated in Mr. and Mrs. Wells' favor when the charges were dismissed; and the criminal proceeding damaged plaintiffs. Therefore, the only disputes involve elements (4)(5) and (6).

There is substantial evidence that Mr. and Mrs. Wells are innocent of the charges. Whether Defendant Thornton had probable cause depends on what evidence is believed. Finally, the jury is entitled to infer malice from the lack of probable cause. See Dahl, *supra*.

E. Qualified Immunity

1. Law

An individual is not shielded by qualified immunity in his individual capacity when his unconstitutional acts violate well-established law. In Harlow, *supra* our Supreme Court eliminated the subjective element previously incorporated into the qualified immunity/good faith defense. Specifically, the Court held that governmental officials are not shielded by qualified immunity when their conduct violates clearly established constitutional rights. Harlow, 457 U.S. at 818. Simply put, qualified immunity is defined in terms of objective conduct, not subjective state of mind. Harlow, *supra*; Mitchell v. Forsyth, 472 U.S. 511, 517 (1985). Qualified immunity should ordinarily fail when the law is well-established because public officials should know the law governing their conduct. Harlow, 457 U.S. at 818.

In Anderson v. Creighton, 483 U.S. at 641, a warrantless search/qualified immunity case, our Supreme Court again succinctly set out the proper focus in qualified immunity cases:

The relevant question in this case, for example, is the objective (albeit fact-specific) question whether a reasonable officer could have believed Anderson's warrantless search to be lawful, in light of clearly established law and the information the searching officers possessed. Anderson's subjective beliefs about the search are irrelevant. [Emphasis added.]

The Court must perform a two-step analysis in determining whether a defendant is shielded from qualified immunity by considering: (1) whether the plaintiff has asserted a violation of the clearly established rights; and (2) whether the defendant's

conduct was objectively unreasonable in light of clearly established law at the time of the alleged violation. Goodson v. City of Corpus Christi, 202 F.3d 730, 736 (5th Cir. 2000). Objective reasonableness is a matter of law for the court to decide when the facts are undisputed. Id. On the other hand, a court may not grant summary judgment based on qualified immunity when a determination of whether the defendant's actions were objectively reasonable necessarily involves a question of fact. Lampkin v. City of Nacogdoches, 7 F.3d 430, 433-34 (1993).

2. Defendant Thornton is Not Shielded by Qualified Immunity

Defendant Thornton is not shielded by qualified immunity because no reasonably competent Environmental Health Administrator could have reasonably believed that the arrest and other harassment were objectively reasonable. Further, no Environmental Health Administrator could have reasonably believed that converting this essentially civil dispute into a criminal prosecution was objectively reasonable.

F. Municipal Liability

1. Law

a. Deficient Actual Customs, Practices, Policies or Procedures

It is now well-established that municipalities are liable under 42 U.S.C. §1983 for constitutional torts that are in compliance with and triggered by the municipality's customs, practices, policies or procedures. Monell v. New York Department of Social Services, 436 U.S. 658 (1978). In fact, a municipality is liable for constitutional deprivations visited pursuant to

governmental custom even though such custom has not received formal approval through the body's official decisionmaking channels. Monell, 436 U.S. at 690-91.

b. Final Repository

Where one individual, alone, is the final authority or ultimate repository of the municipality's power the municipality is liable for the individual's wrongful acts because his decisions represent official policy. Turner v. Upton County, Texas, 915 F.2d 133 (5th Cir. 1990); Familias Unidas v. Briscoe, 619 F.2d 391, 404 (5th Cir. 1980).

c. Single Incident

A "single incident" is sufficient if the wrongful act is pursuant to the municipal's custom or policy. Pembaur v. City of Cincinnati, 475 U.S. 469 (1986). The Court recognized that where the action is directed by those who establish governmental policy:

the municipality is equally responsible whether that action is to be taken only once or to be taken repeatedly. To deny compensation to the victim would therefore be contrary to the fundamental purpose of §1983.

Pembaur, 475 U.S. at 481. See also Oklahoma City v. Tuttle, 471 U.S. 808, 822 (plurality opinion). (Once a municipal policy is established, "it requires only one application . . . to satisfy fully Monell's requirement that a municipal corporation be held liable only for constitutional violations resulting from the municipality's official policy.").

See also Bd. of County Com'rs of Bryan Co., Ok. v. Brown, 117 S.Ct. 1382 (1997).

d. Failure to Train/Supervise

A constitutional policy may still be unconstitutionally applied in which case the municipality is liable if it did not adequately train the officer and the constitutional wrong is caused by the failure to train. Canton v. Harris, 489 U.S. 378, 387 (1989). The failure to train must amount to a deliberate indifference to the rights of the person with whom the law enforcement officer comes into contact. Id. Likewise, a municipality's failure to supervise triggers liability for the constitutional torts committed by the individual officer. Kersh v. Derozier, 851 F.2d 1509, 1513 n. 6 (5th Cir. 1988); Lozano v. Smith, 718 F.2d 756, 768-771 (5th Cir. 1983); Douthit v. Jones, 641 F.2d 345, 346 (5th Cir. 1981); McClelland v. Facticeau, 610 F.2d 693, 697 (10th Cir. 1979).

2. Defendant Nacogdoches County is Liable for the Unlawful Arrest

It is uncontroverted that Defendant Thornton was the ultimate repository of authority over what action, if any, to take against trailer park owners involved in a dispute with Nacogdoches County. Therefore, Defendant Nacogdoches County is liable for the wrongful acts done by Defendant Thornton in the case at bar.

It is also undisputed that Defendant Nacogdoches County's actual policy was to provide Defendant Thornton with absolute discretion in determining whether to get citizens arrested. This deficient actual policy, once established, required only one incident to trigger Defendant Nacogdoches County's liability.

Defendant Nacogdoches County did not provide Defendant Thornton with any relevant training concerning what factors to consider in deciding whether to convert an essentially civil dispute into a criminal proceeding or the requirements for a lawful arrest. There is substantial evidence that this lack of training is a proximate cause of the unlawful arrests which is sufficient to trigger Defendant Nacogdoches County's liability.

VII

Conclusion

Plaintiffs respectfully request that Defendants' Motion for Summary Judgment be in all things denied for the reasons set out above.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have served all counsel of record in this case including the following with a true and correct copy of the foregoing Plaintiffs' Response in Opposition to Defendants' Motion for Summary Judgment by sending same United States regular mail, postage prepaid to:

Robert S. Davis
Flowers, Davis, Fraser,
Derryberry & Van Cleef, L.L.P.
815 Rice Road
Tyler, Texas 75703

on this the 9th day of November, 2001.



Curtis B. Stuckey

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

1.	TOMMY WELLS, JR.	\$	
	and	\$	
2.	CHERYL WELLS	\$	
		\$	
	Plaintiff	\$	
		\$	
v.		\$	CIVIL ACTION NO. 9:00CV142
		\$	
1.	NACOGDOCHES COUNTY, TEXAS	\$	JUDGE COBB
	and	\$	
2.	EDWARD THORNTON	\$	
		\$	
	Defendants	\$	

AFFIDAVIT OF TOMMY WELLS

Comes now Affiant Tommy Wells who being duly deposed upon his oath states as follows:

I

I am the plaintiff in the above styled case. I am over 21 years of age, of sound mind, and otherwise competent to give this affidavit.

II

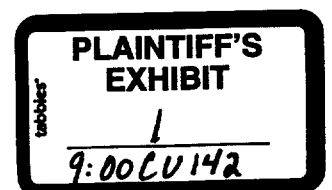
My wife Cheryl Wells and I owned a trailer park in Nacogdoches County. I set up a corporation but my wife and I still owned the land.

III

My wife was listed as the CEO of the corporation and I was listed as the registered agent for process. However, I was the one who ran the trailer park and made the decisions regarding the trailer park. My wife had very little to do with it.

IV

I originally planned to install a wetlands septic system for the trailer park. However, this became economically impossible



when the original estimate that I received was changed from \$60,000 to \$150,000.

V

I was in the process of designing and permitting the wetlands when my engineer, partially paid, quit. I had a problem because people were already leasing lots.

VI

I met with Defendant Thornton and his assistant in order to solve the problem. We discussed the fact that the law says that a landowner can install septic systems.

VII

Defendant Thornton gave me permission to install septic systems. I had not installed any septic systems before I talked to him. I put in temporary systems until aerobic systems could be installed. Defendant Thornton knew that I was doing this.

VIII

Defendant Thornton and his assistant began harassing me for no good reason. He told me that the septic system could not exceed 5000 gallons after I had already installed it and it already exceeded 5000 gallons. In fact, Defendant Thornton had approved each of the septic tanks when they were installed. However, Defendant Thornton abruptly reversed himself and would not allow me to work on the septic tanks and would not give me permission to get anything done. My hands were tied.

IX

I am a law abiding citizen and had never been arrested.

X

A tenant's toilet overflowed about a week before my wife and I were arrested.

XI

Defendant Thornton changed the rules of the game after tenants were already at the trailer park. This put me in an untenable situation after he tied my hands and would not let me work on the septic tanks or give me permits to get anything done.

XII

When the tenant's toilet overflowed about a week before my wife and I were arrested. I took immediate care of the problem, but in the meantime the yard was saturated.

XIII

I used a pump to dry out the area as best I could and the water itself was not contaminated because it was chlorinated. However, I did have a mess on my hands until I was able to dry out the area.

XIV

The trailer park is on clay soil. Therefore, when it rains it leaves water standing.

XV

I now know that on November 8, 1999 Defendant Thornton prepared and filed separate criminal complaints against me and my wife. On December 10, 1999 Defendant Thornton prepared and filed three additional complaints against me.

XVI

All of the complaints contained material false information and Defendant Thornton had actual, or at least constructive knowledge that the complaints contained material false information.

XVII

Defendant Thornton knew or should have known that an arrest warrant would not have been issued with out the material false information.

XVIII

My wife and I were arrested on December 17, 1999 in front of our kids. We were taken to jail where we were finger printed and mugshotted. We stayed locked up until we were able to post bond.

XIX

We made the front page of the Nacogdoches Daily Sentinel. The harassment and negative publicity ruined my business and dried up our credit forcing my wife and I to file bankruptcy.

XX

Defendant Thornton maliciously prosecuted me. A prosecution was commended against me. The prosecution was caused by Defendant Thornton or through his aid and cooperation. I believe that Defendant Thornton acted with malice in the institution of the proceeding. The criminal proceeding terminated in my favor. I am innocent of the charges. I suffered damages.

XXI

The criminal charges against me were dismissed on May 2, 2000. The State of Texas later filed a civil suit. I believe this is how the situation should have been taken care of in the first place.

XXII

I specifically asked Defendant Thornton not to tell my wife about problems at the trailer park and he agreed not to tell her. I did not want to bother her.

Further affiant sayeth not.

Tommy Wells
TOMMY WELLS

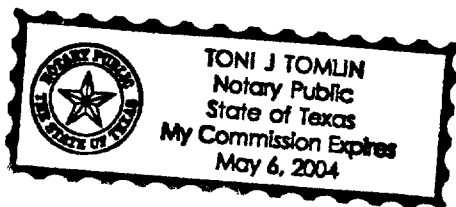
STATE OF TEXAS

COUNTY OF

Nacogdoches

*
*
*

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned Notary Public on this the 2nd day of November, 2001.



Toni J. Tomlin
Notary Public in and for

Nacogdoches County, Texas

My commission expires: 5/6/04

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

1.	TOMMY WELLS, JR.	\$	
	and	\$	
2.	CHERYL WELLS	\$	
		\$	
	Plaintiff	\$	
		\$	
v.		\$	CIVIL ACTION NO. 9:00CV142
		\$	
1.	NACOGDOCHES COUNTY, TEXAS	\$	JUDGE COBB
	and	\$	
2.	EDWARD THORNTON	\$	
		\$	
	Defendants	\$	

AFFIDAVIT OF CHERYL WELLS

Comes now Affiant Cheryl Wells who being duly deposed upon her oath states as follows:

I

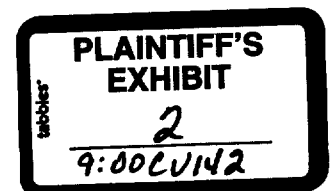
I am the plaintiff in the above styled case. I am over 21 years of age and am otherwise competent to give this affidavit which is based on my person knowledge.

II

I was technically the CEO of the corporation set up in connection with the trailer park. However, I had very little to do with the operation of the trailer park. My husband was responsible for the day to day operation of the trailer park and I knew very little about problems with the trailer park.

III

I was shocked when I was arrested. I knew nothing about my husband's agreement with Defendant Thornton. My involvement in the trailer park was very limited.



IV

My husband and I were arrested on December 17, 1999 in front of our kids. We were taken to jail where we were finger printed and mugshotted. We stayed locked up until we were able to post bond.

V

We made the front page of the Nacogdoches Daily Sentinel. The harassment and negative publicity ruined the business and dried up our credit forcing my husband and I to file bankruptcy.

VI

I have read Dwayne Brook's Affidavit. He says that he talked to me two or three times to fix a problem. I never talked to Dwayne Brook about that problem.

VII

Defendant Thornton maliciously prosecuted me. A prosecution was commenced against me. The prosecution was caused by Defendant Thornton or through his aid and cooperation. I believe that Defendant Thornton acted with malice in the institution of the proceeding. The criminal proceeding terminated in my favor. I am innocent of the charges. I suffered damages. The criminal charges against me were dismissed on May 2, 2000. The State of Texas later filed a civil suit. I believe this is how the situation should have been taken care of in the first place.

Further affiant sayeth not.

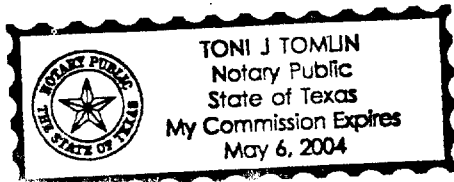
Cheryl Wells
CHERYL WELLS

STATE OF TEXAS

COUNTY OF *Nacogdoches*

*
*
*

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned Notary
Public on this the *2nd* day of *November*, 2001.



Toni J. Tomlin
Notary Public in and for
Nacogdoches County, Texas

My commission expires: *5/6/04*

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

TOMMIE WELLS, JR. AND
CHERYL WELLS

VS.

CA NO. 9:00CV142

NACOGDOCHES COUNTY, TEXAS
AND EDWARD THORNTON

ORAL DEPOSITION OF
TOMMIE WELLS, JR.
OCTOBER 17, 2000

ORAL DEPOSITION OF TOMMIE WELLS, JR., produced as a witness duly sworn by me at the instance of the DEFENDANT, taken in the above styled and numbered cause on the 17th day of September, 2000 from 10:56 a.m. to 3:35 p.m., before DEENA L. WHITFIELD, Certified Shorthand Reporter No. 3241 in and for the State of Texas, reported by oral stenography method at the Stuckey, Garrigan & Castetter Law Offices, 2803 C North Street, Nacogdoches, Texas; taken pursuant to Notice and in compliance with the Federal Rules of Civil Procedure and Local Rules by the Eastern District of Texas; signature required.



1 Q. All right. How many systems initially did you put
2 in?

3 A. Several, that's been a while back, I couldn't tell
4 you exactly how many. Several.

5 Q. Was there a certain point when they told you that
6 they didn't think that you could, as a landowner, put systems
7 in unless you were going to live on the property yourself or
8 live in the house itself?

9 A. No.

10 Q. Did they ever talk to you about the differences
11 between regular property and commercial property in terms of
12 landowner installation of septic systems?

13 A. Just that initial conversation that we had. At
14 that point in time, we didn't know how it would fall.

15 Q. So they didn't tell you that you could put them in
16 yourself or you couldn't put them in --

17 A. They told me I could, yes.

18 Q. All right. And then is it your testimony that you
19 went out and started putting them in?

20 A. Yes.

21 Q. Had you put any septic systems in before you went
22 in and talked to them, --

23 A. No.

24 Q. -- Mr. Serrano and Mr. Thornton?

25 Did you ever go in and talk to Mr. Serrano and Mr.

1 Thornton and tell them that you were having trouble with your
2 time line and your engineer?

3 A. Yes, yes, we discussed that.

4 Q. And at that time, you actually had homes already
5 moving in, didn't you?

6 A. Yes.

7 Q. And did you tell them basically that the engineer
8 and doing this wetlands deal was messed up?

9 A. Yeah, the engineer was dragging his feet, wasn't
10 moving as fast as what we had anticipated, and at that time I
11 had asked Ed if it was okay if we put temporary systems until
12 we figured out what we were going to do, we were still
13 pursuing the wetlands at that time, and he told me yeah.

14 Q. Did they tell you that anything over 5,000 GPD
15 would fall under TNRCC?

16 A. No, they did not.

17 Q. Did you permit anything through TRNCC?

18 A. No.

19 Q. How many trailers did you tell Mr. Serrano and Mr.
20 Thornton that you were going to put in initially?

21 A. Forty was what our ultimate goal was.

22 MR. STUCKEY: Robert, I hate to do this. I
23 need to go to the little boys' room.

24 MR. DAVIS: Oh, that's all right.

25 (Break from 1:34 p.m. to 1:38 p.m.)

1 Q. No, five --

2 MR. DAVIS: You'll have to come down here and
3 whisper in my ear --

4 MR. STUCKEY: Well, just let him ask it, I
5 don't give a shit, Robert.

6 (Sotto voce discussion between Mr. Davis
7 and Mr. Thornton)

8 Q. (BY MR. DAVIS) Oh, five houses on one tank each.

9 MR. THORNTON: With separate systems, one tank
10 with graveless each -- for each house.

11 A. He's talking about the temporary systems that they
12 gave me authority to do. Yes.

13 Q. Tell me what you did on these temporary systems.

14 A. We just installed one 500 gallon tank and some
15 places we put 60, some we put 80 foot of field line in a
16 temporary situation until we got aerobic systems installed.

17 Q. Did Mr. Serrano ask you to install the systems?

18 A. He knew we were installing systems.

19 Q. Did he ask you to install the systems?

20 A. To be honest, I don't -- I can't recall him asking
21 me flat out. If he would have asked me, I would have told
22 him.

23 Q. Well, do you recall if he did or if he didn't?

24 A. I don't recall him asking that question, no.

25 Q. Are you saying he didn't or are you just saying you

1 don't know one way or the other?

2 A. I don't know, I mean I don't remember him asking me
3 that question, but they knew, I mean they knew I was doing
4 that.

5 Q. Well, do you remember -- are you saying he didn't
6 ask you that question or you just don't know?

7 A. I don't remember him asking that question.

8 Q. Okay. He may have, he may not have?

9 A. Yeah, he may have, I mean . . .

10 Q. All right. Did he ask you to fix those systems?

11 A. Yeah.

12 Q. And did you tell them that you couldn't get anyone
13 to install them anytime soon and that people were already
14 moving in?

15 A. Yeah, we had -- most installers were just flooded
16 at the time.

17 Q. These families were moving in, right?

18 A. Right.

19 Q. Did you warn these families that you had effluent
20 surfacing on the property?

21 A. Well, we wouldn't have effluent if nobody was
22 living there.

23 Q. The families moving in, did you warn the families
24 that were moving in that there was effluent surfacing on the
25 properties -- on the property?

1 Q. And a lot of these families had children, didn't
2 they?

3 A. Yes.

4 Q. Are you aware of what the health dangers are?

5 A. Yes.

6 Q. Are you aware that people can get sick, very, very
7 sick if they're exposed to effluent, aren't you?

8 A. Yes.

9 Q. In fact, it can breed and spread very harmful
10 diseases, can't it?

11 A. I guess so, I mean yeah, I guess, I mean I'm not a
12 biology major, but . . .

13 Q. Do you recall a complaint being filed with the
14 TRNCC on September 3rd of 1998?

15 A. No.

16 Q. Do you recall a September 9th, 1998 complaint being
17 filed against you?

18 A. Through TNRCC?

19 Q. No, with the County from one of the -- from one of
20 the people on your property. In fact, two complaints on that
21 day.

22 A. I knew there was complaints being made, but as far
23 as telling you what date, no, I couldn't tell you what date.

24 Q. In September, 1998 did Mr. Serrano basically tell
25 you that before any additional homes could be brought in that

1 you would have to bring the other places up to state
2 standards?

3 A. Yes.

4 Q. And you didn't do that before moving other homes
5 in, did you, sir?

6 A. We had one system that we had a problem with that
7 was -- the people moved out it, the trailer was vacating, and
8 that was the last system that we had problems with.

9 MR. DAVIS: I'll object to the nonresponsive
10 nature of the answer to that last question.

11 Q. (BY MR. DAVIS) I'll repeat the question. You
12 allowed people to move onto the property, additional people,
13 before you brought the other places up to state standards,
14 correct?

15 A. Yes.

16 Q. On November 25th of 1998, do you recall Mr. Serrano
17 calling you to the -- or calling you and asking you to come
18 into the office, and then when you came in, telling you not
19 to install any more systems until the ones that were
20 previously installed were brought up to the state's minimum
21 standards?

22 A. Repeat the question.

23 Q. November of 1998, do you recall Mr. Serrano calling
24 you and you coming into the office and Mr. Serrano telling
25 you not to install any more systems until the ones that you

1 coming to the surface. That's what we're talking about,
2 isn't it, sir?

3 A. That's what you're talking about.

4 Q. Well, we've just been through these numerous
5 incidents where that has occurred, correct?

6 A. Yes.

7 Q. And regardless of what you want to blame it on, it
8 all comes back to the sewage systems, the septic systems that
9 you had in place out there, doesn't it?

10 A. That's my understanding.

11 Q. Did you ever alter any systems that had been put in
12 on the property?

13 A. What's your definition of alter?

14 Q. Well, did you ever have any systems put in by a
15 licensed septic system installer that you then later went
16 back to and altered in some manner?

17 A. Yes, we did. With the consent of Ed Thornton.

18 Q. How many --

19 A. We were told -- we were told on several occasions
20 that if a sprinkler -- just because the design and layout of
21 a engineer and a sprinkler doesn't work here, it's okay to
22 move it. One system we had 11 sprinklers on, we thought that
23 was overkill. I was told, hey, if you need to, take a
24 sprinkler off.

25 Q. And you're saying Mr. Thornton told you that?

1 A. Yes, I have a witness to that also.

2 Q. Any additional alterations that you made, Mr.
3 Wells, to septic systems out there?

4 A. Be more specific, please.

5 Q. Well, you tell me. Tell me each alteration that
6 you made to the septic systems --

7 A. We moved sprinkler --

8 Q. -- that you can recall.

9 A. -- heads, we tied other homes onto the systems.

10 Q. Other homes onto systems that were designed for one
11 home, correct?

12 A. Right.

13 Q. How many systems did you have in place that were
14 designed for more homes when you actually ran more than one
15 home into it?

16 A. Two.

17 Q. And how many homes did you run in there?

18 A. Four per system.

19 Q. And as a result of that, you had effluent surfacing
20 and other septic system problems, didn't you?

21 A. No. Well, the reason that we ended up having to do
22 that, we moved some homes in there and we tried to get
23 another permit to install a system and we were told that we
24 couldn't have any more permits.

25 Q. Until you cleaned up the situation that you had,

1 kinds of things out there --

2 MR. STUCKEY: Object to the nonresponsiveness,
3 yours, Robert.

4 Q. (BY MR. DAVIS) While you were out there on this
5 piece of property that was, as you've described it yourself,
6 a serious health hazard to everyone living out there --

7 A. I didn't describe it as a serious health hazard.

8 Q. Don't interrupt, Mr. Wells.

9 A. That was you.

10 MR. STUCKEY: Well, but don't misstate what he
11 said, Robert. He has never said --

12 MR. DAVIS: I'm -- look, Curtis, if you want
13 to make statements during the course of the deposition and if
14 these gentlemen wants to interrupt me halfway through my
15 questions, there's a way that we can solve that.

16 MR. STUCKEY: But don't say things that he
17 never said, Robert.

18 MR. DAVIS: Well, I think that is exactly what
19 he said. I mean he is -- well, we'll read the deposition
20 transcript and find out.

21 Q. (BY MR. DAVIS) I'll rephrase my question, but try
22 not to interrupt me if you will, sir.

23 A. Yes, sir.

24 Q. You were informed at some point of the 5,000 gallon
25 rule or 5,000, yeah, 5,000 gallon rule, weren't you, sir?

1 A. Yes.

2 Q. And at that point you had how many houses leading
3 into one system?

4 A. At that point we didn't have any houses -- well, I
5 mean what's the question? Repeat the question.

6 Q. How many houses did you have hooked or bootlegged
7 into one system?

8 A. Bootlegged?

9 Q. How many houses did you have hooked into one system
10 that was designed to operate for one house?

11 A. None. We're talking about --

12 Q. Didn't you have four houses hooked into one septic
13 system --

14 A. Aerobic system, a 750 gallon aerobic system.

15 (Sotto voce discussion between Mr. Davis
16 and Mr. Thornton)

17 Q. Well, you would agree with me that on some of these
18 aerobic systems, you were running more houses into the system
19 than the system was designed for?

20 A. Yes.

21 Q. Okay. We don't have any dispute about that,
22 correct?

23 A. No.

24 Q. And that causes problems with the system as well,
25 doesn't it?

1 A. If it's not properly chlorinated, no -- I mean yes,
2 it will.

3 Q. And in fact, what happens in an aerobic system, if
4 it's not properly chlorinated, the aerobic system will spray
5 out in the form of sprinkler heads effluent onto surrounding
6 property, won't it?

7 A. Yes.

8 Q. And that also spreads bacteria and viruses and all
9 other types of diseases, doesn't it?

10 A. That's my understanding, yes.

11 Q. Well, you were aware that type of thing was
12 dangerous, weren't you?

13 A. Yes. That's why we -- we made sure it had chlorine
14 in it at all times.

15 MR. DAVIS: Well, I will object to the
16 nonresponsive nature of the answer.

17 THE WITNESS: Well, I responded to your
18 question.

19 MR. DAVIS: Well, I don't think you did, sir.

20 Q. (BY MR. DAVIS) You had more homes hooked into the
21 aerobic systems than they were designed to handle, didn't
22 you, sir?

23 A. Yes.

24 Q. Thank you. Do you recall that in November of 1999
25 that there were several cases filed with the JP court?

1 A. Yes.

2 Q. And then do you recall that in December of 1999
3 there was another complaint that there was a plastic pipe
4 that was pumping effluent through it to the ditch on Simmons
5 Road?

6 A. Yes.

7 Q. And in fact, there was a plastic pipe that was
8 dumping effluent onto the ditch on Simmons Road, wasn't
9 there?

10 A. No.

11 Q. Okay. Are you telling the folks on the jury panel
12 that you were not pumping effluent from septic systems onto
13 the ditch on Simmons Road?

14 A. That pipe that we had installed in there was a
15 drain.

16 Q. Were you pumping effluent onto Simmons Road from
17 the septic systems?

18 A. Yes.

19 Q. Thank you.

20 A. But this was water from a aerobic system that had
21 been through treatment process.

22 Q. On one of the systems that you -- well, strike
23 that.

24 You were pumping effluent through a pipe into a
25 ditch on Simmons Road, weren't you, sir?

1 A. Not through a pipe.

2 Q. Well, through a drain?

3 A. Drain.

4 Q. Well, it was a plastic pipe, wasn't it?

5 A. We had a plastic pipe installed back there for a
6 drain, for a drainage problem that we had.

7 Q. Well, and you were pumping through that pipe onto
8 Simmons Road or into the ditch alongside Simmons Road
9 effluent from your septic systems, weren't you, sir?

10 A. We were pumping treated water from an aerobic
11 system through there, yes.

12 Q. Now you're aware that you're not supposed to pump
13 water, even if it's treated, onto a ditch alongside the road,
14 aren't you, sir?

15 A. I was not aware of that.

16 Q. Well, you were aware of what a aerobic system is
17 designed to do is spray out water, correct?

18 A. Correct.

19 Q. And you were running more houses on the aerobic
20 systems than they were designed for, weren't you?

21 A. Because of the 5,000 gallon, yes.

22 Q. And I think you've already testified, you're not
23 any type of expert in sanitation systems or treating water
24 that's in aerobic systems, are you, sir?

25 A. No, but it's a pretty simple process.

1 Q. Well, if it's so simple, sir, why have you been
2 having problems for a year and four months at this point?

3 A. I did learn something.

4 Q. Why had you been having problems if this is so
5 simple for a year and four months?

6 A. I don't know.

7 Q. Do you recall Mr. Thornton's office taking water
8 samples in the problem areas around the mobile home park in
9 January of 2000?

10 A. After the arrest, yes.

11 Q. And during this period of time, there were more
12 complaints being made, weren't there, sir, to you and to the
13 county?

14 A. Yeah.

15 Q. Complaints of sewage in people's yards, complaints
16 of sewage being pumped out into the roadway?

17 A. Not during that time, no.

18 Q. In January there weren't, sir?

19 A. Pumping sewage, no.

20 Q. How about January, were there complaints of sewage
21 in people's yards?

22 A. I think there were some complaints made to the
23 county, but not directly to us.

24 Q. On February 7th of 2000 after you appeared before
25 the JP, did you send a letter or have your attorney send a

1 letter to Mr. Thornton's office stating that you'd be willing
2 to meet with Mr. Thornton and to fix and inspect all the
3 systems then?

4 A. Our lawyer did, yes.

5 Q. And do you recall the county taking more water
6 samples in March of 2000 out there?

7 A. Yes.

8 Q. And do you recall the fact that the results were
9 still returned as dangerous?

10 A. Our lawyer got the results.

11 Q. Well, were you ever told that the results revealed
12 dangerous conditions out there even as late as March 20th of
13 2000?

14 A. I'm not sure on exact dates, no.

15 Q. Well, do you recall that water samples that were --

16 A. I know that some of the samples came back bad, yes.

17 Q. Well, very bad, didn't they?

18 A. I don't know. I don't know what the scale is, I'm
19 not educated in that area.

20 Q. Well, on the water being pumped out onto the
21 ditches along the side of the road, those were high, weren't
22 they, sir, from the aerobic systems?

23 A. There wasn't any water samples taken of those.

24 Q. Are you sure about that?

25 A. Positive.

1 Q. Where were the water samples taken?

2 A. They took them from different places.

3 Q. Well, if you've never --

4 A. After the arrest.

5 Q. If you've never seen the water samples, sir, then
6 how do you know where they were taken?

7 A. Because they -- or said -- they listed everywhere
8 they got their samples.

9 Q. Well, if you've never seen that, sir, then I mean
10 --

11 A. I didn't say I had never seen it, I said I didn't
12 understand exactly what -- I don't know the range of good and
13 bad.

14 Q. Well, did you ever think that it might be important
15 to find out the range of good and bad?

16 A. Yeah.

17 Q. Well, have you ever taken it on yourself to do
18 that?

19 A. Yes.

20 Q. Did you know that the percentage of fecal coliform
21 and other confluent growth in some of these areas was too
22 numerous to count even for the laboratory?

23 A. Yes, after the arrest, yes. We were -- the systems
24 wasn't get serviced at all. We were afraid to touch them. I
25 tried to get Kevin Dillon to take care of the systems and he

1 was told not to touch them. So nobody was servicing the
2 systems like they were supposed to be serviced.

3 Q. So is it your testimony that you weren't servicing
4 the systems out at --

5 A. (Inaudible)

6 Q. -- Naconiche Village?

7 From what period of time to what period of time
8 were not --

9 A. After the arrest.

10 Q. -- servicing the -- excuse me, you have to let me
11 finish my question, sir.

12 A. Excuse me. I'm sorry.

13 Q. You're excused. Are you telling me that you were
14 not servicing the systems out at Naconiche Village for a
15 substantial period of time?

16 A. Yes.

17 Q. Have you serviced them since December of 1999?

18 A. Yes.

19 Q. Well, when did you start servicing the systems?

20 A. When I got fed up with waiting on something to get
21 worked out.

22 Q. Well, when was that, sir?

23 A. I'm not sure what date that was.

24 Q. Well, and you had known for --

25 A. And --

1 A. I guess, yeah.

2 Q. Well, you were the one doing it, you know, don't
3 you?

4 A. I was not discharging raw sewage, no.

5 Q. Is this the type of hose that you were using when
6 you would pump sewage out of the septic system --

7 A. I never pumped --

8 Q. -- on your property?

9 A. -- sewage, raw sewage out without being treated.

10 (Exhibit No. 5 marked)

11 Q. Do you recognize that picture?

12 A. No, I don't.

13 Q. Do you recognize that trailer?

14 A. No, I don't.

15 Q. In those pictures, does it appear that there are
16 once again hoses from the pump down in a septic system?

17 A. Yes.

18 Q. And have you ever put hoses in a pump down in a
19 septic system on your property?

20 A. Yes.

21 Q. And were those -- what type of systems were those?

22 A. Could you -- do what now?

23 Q. What type of system is that?

24 A. I don't know, I don't know where that's at.

25 Q. Well, what type of systems would you put hoses and

1 it's that same trailer house?

2 A. I'm not sure.

3 Q. Well, let's compare the two. Does it look like the
4 same trailer house?

5 A. I'm not sure, I mean it's too hard to tell. Most
6 of them look alike.

7 Q. Well, let's see, there's a door there, correct, you
8 can see that in both pictures? And then there's a big power
9 pole right there, isn't there?

10 A. Uh-huh.

11 Q. And does that look to you to be the same trailer?

12 A. Most Fleetwoods are set up the same way, it's hard
13 to tell.

14 Q. Well, anyway in this picture, sir, you can
15 certainly see the hose ending there kind of in the ditch,
16 can't you?

17 A. I see the hose, yes.

18 Q. And that would be the hose going from -- if this is
19 the same trailer, going from the septic system down in this
20 ditch area, correct?

21 A. Correct.

22 Q. And is that something that you believe is a proper
23 thing to do assuming that's at Naconiche Village to pump
24 effluent or sewage from a septic system into a ditch?

25 A. If it's been treated, yes.

1 Village?

2 A. I don't know.

3 Q. You say in here that Nacogdoches County and
4 Defendant Thornton didn't allow you to work on your septic
5 tanks, is that what you're saying?

6 A. I guess I need a copy of that to read.

7 Q. Well, just let me ask you if it's true. Did
8 Nacogdoches County or Mr. Thornton ever tell you not to work
9 on your septic tanks?

10 A. After the arrest, yes, we were told not to touch
11 anything.

12 Q. Mr. Thornton told you not to touch anything?

13 A. Mr. Thornton, yes.

14 Q. Said don't touch anything?

15 A. Right.

16 Q. Are you claiming in this case that the complaints
17 that were filed against you contained material or false
18 information?

19 A. Yes.

20 Q. What material or false information did the
21 complaint contain?

22 A. That we were discharging raw sewage.

23 Q. And as you sit here today, you're claiming that's
24 not true?

25 A. Yes.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

TOMMIE WELLS, JR. AND
CHERYL WELLS

VS.

CA NO. 9:00CV142

NACOGDOCHES COUNTY, TEXAS
AND EDWARD THORNTON

ORAL DEPOSITION OF
CHERYL WELLS
OCTOBER 17, 2000

ORAL DEPOSITION OF CHERYL WELLS, produced as a witness
duly sworn by me at the instance of the DEFENDANT, taken in
the above styled and numbered cause on the 17th day of
September, 2000 from 3:35 p.m. to 4:35 p.m., before DEENA L.
WHITFIELD, Certified Shorthand Reporter No. 3241 in and for
the State of Texas, reported by oral stenography method at
the Stuckey, Garrigan & Castetter Law Offices, 2803 C North
Street, Nacogdoches, Texas; taken pursuant to Notice and in
compliance with the Federal Rules of Civil Procedure and
Local Rules by the Eastern District of Texas; signature
required.



1 might say?

2 A. (Moving head up and down)

3 Q. Okay.

4 A. Or the guy who worked with him sometimes, if he was
5 over, I'd hear them talking, but not --

6 Q. Okay. Who is the guy that -- but as far as
7 something that you know of your own personal knowledge,
8 there's really nothing, is there?

9 A. No.

10 Q. All right. And who was the guy that you were
11 talking about that worked with your husband some?

12 A. Danny Simmons.

13 Q. And what did he do for your husband?

14 A. Pretty much everything I think, just kind of a --

15 Q. Kind of a handyman, kind of fix-it-all person?

16 A. Uh-huh.

17 Q. Now I think that -- and you may know a little
18 better what your title is than your husband did, but it's my
19 understanding that you're an officer of Naconiche Village,
20 Inc., is that right?

21 A. Yes.

22 Q. And do you know your title?

23 A. I believe it's CEO.

24 Q. Okay. Chief executive officer?

25 A. I believe so, yes.

1 Q. And do you recall offhand what your husband is?

2 A. I remember the agent, the registered agent, but I'm
3 not sure if there's anything else.

4 Q. That's okay. And is that really just from hearing
5 your husband testify?

6 A. That was from -- no, we talked about it vaguely, I
7 was -- I had intended to be more involved, but ended up
8 getting pregnant and having, you know, so my involvement was
9 out the door, so . . .

10 Q. Okay.

11 A. I started out, is what I'm trying to say, trying to
12 be involved, and then it didn't work out.

13 Q. Okay. One of those situations where really you
14 started out and you intended to be probably really involved?

15 A. Yeah.

16 Q. But then got pregnant and basically weren't
17 involved in the inner workings of the business?

18 A. Uh-huh.

19 Q. Is that a yes?

20 A. Yes. I'm sorry.

21 Q. No, that's okay. It's very natural to say uh-huh
22 and huh-uh, --

23 A. I know.

24 Q. -- it is. And I'll try to correct you when you do
25 that.

1 occurred, you were record owners of the land, correct?

2 A. I believe so.

3 Q. All right. And still may be?

4 A. Uh-huh.

5 Q. All right. When you and your husband went into
6 this venture, this Naconiche Village, did you think it was
7 going to be a whole lot easier than it turned out to be?

8 A. Didn't anticipate some of the problems, I mean I
9 knew there would be problems, there's, you know, anytime you
10 deal with people, there's problems, you know, but it wasn't
11 always the problems I expected, but it, you know, yeah.

12 Q. All right. How long were y'all without an income
13 after y'all -- after your husband left his job and started
14 Naconiche Village, Inc.?

15 A. I'm really not sure how long it was. I really
16 honestly don't know.

17 Q. That's all right. Do you handle the family
18 finances or does your husband?

19 A. He does. Help when I can.

20 Q. But basically he would be the one --

21 A. Basically, uh-huh.

22 Q. -- with the knowledge and experience --

23 A. Yes.

24 Q. -- of doing that?

25 Thank you. And I'll try to remind you on the yes

1 Q. All right.

2 A. Yes, sir. Sorry.

3 Q. Now I take it you became aware at some point that
4 there were problems with the septic systems out at Naconiche
5 Village, Inc.?

6 A. Yes, vaguely.

7 Q. And then at some point, I believe that you and your
8 husband, who were the record owners of the property, were
9 visited by a constable, is that correct?

10 A. When we were arrested?

11 Q. Yes.

12 A. Yes.

13 Q. And did the constable bring papers with him or
14 what? If you will, just tell me more or less what occurred.

15 A. He said that he had a warrant -- he said were you
16 aware that there was a warrant for your arrest, and I said
17 no, and he --

18 MR. STUCKEY: Tommy Hinton's not a constable,
19 Robert.

20 MR. DAVIS: Oh, I thought you said he was a
21 constable.

22 TOMMIE WELLS: Yeah, he's a constable -- he's
23 not a justice of the peace.

24 MR. THORNTON: He's a deputy constable.

25 MR. STUCKEY: He used to be a deputy sheriff.

1 don't know for sure, follow me. And so she followed him to
2 the house and followed us up to the sheriff's department to
3 watch the kids until one of our parents could get there. My
4 parents live in Tyler and his parents live in Lufkin.

5 Q. Okay. And so you drove your vehicle down to the
6 police station or sheriff's department?

7 A. I don't know, I don't even know where we were.

8 Q. Was it a -- well, you went down to some police or
9 sheriff's station, one or the other?

10 A. Yes.

11 Q. All right. And had the deputy constable hand-
12 cuffed you or anything?

13 A. No.

14 Q. Okay. Hadn't pulled his gun on you or anything
15 like that?

16 A. No.

17 Q. Or used any type of force on you?

18 A. No, he was apologetic.

19 Q. All right. And how old were your kids?

20 A. They were six, four, and nine months.

21 Q. So in terms of what you might see on TV on one of
22 those police shows, this is a little different in that the
23 constable basically told you what the situation was and
24 allowed you to drive your own vehicle down to the police
25 station or jail and followed you, is that correct?

1 A. Yes.

2 Q. All right. And then once you arrived at the police
3 station or sheriff's department, whichever the case may have
4 been, would you describe for me what occurred then?

5 A. I'm sorry. Would --

6 Q. Sure. Once you -- that's all right.

7 MR. STUCKEY: What happened after you got to
8 --

9 MR. DAVIS: Curtis, --

10 MR. STUCKEY: Well, --

11 MR. DAVIS: Curtis. Curtis, let me ask the
12 questions, please, sir.

13 MR. STUCKEY: (Pretending to zip lips)

14 MR. DAVIS: Thank you.

15 Q. (BY MR. DAVIS) What happened after you arrived at
16 the police station or sheriff's department?

17 A. I don't remember. Went in, they -- yeah, they take
18 your shoes, they take everything from you, you know, if you
19 have anything on you they take that. And then you go through
20 the doors, you know, the gate there and they take you to this
21 thing and they frisk you, and they took us back to a cell and
22 locked the door.

23 Q. Same cell like a holding cell?

24 A. It's a holding cell, yes.

25 Q. All right. And did you and your husband, were

1 y'all both in that cell together?

2 A. No.

3 Q. Okay. Take females to one, males to the other?

4 A. Yes.

5 Q. All right. And I think they had taken your shoes
6 from you at the time, is that right?

7 A. Yes, sir.

8 Q. Did you stay in the remainder of your street
9 clothes, the clothes that you were wearing before you came
10 in?

11 A. Yes.

12 Q. Okay. So dressed basically like you are here today
13 or in a similar fashion, shirt and pants and belt?

14 A. Jeans, yeah.

15 Q. All right. And how long did you stay in that
16 holding cell?

17 A. Five hours.

18 Q. Until approximately what time, do you recall?

19 A. It was probably 10:30.

20 Q. And what occurred at 10:30?

21 A. They finally came and -- I guess it was probably
22 around 10:00 when they finally came in and got me and then
23 took me in, and you have to go through all the mugs shots and
24 fingerprinting and --

25 Q. Paperwork stuff?

1 A. Yes.

2 Q. All right. In the cell during that five hour
3 period, what, if anything, occurred?

4 A. Well, the worst part of it for me was that I was
5 breast feeding -- I hate to talk about this, but it's a
6 problem, you know, when you're breast feeding, and so anyway,
7 it was just really uncomfortable, I had some physical
8 problems from that.

9 Q. All right. Related to the fact that you had been
10 breast feeding a child during that period of time?

11 A. Uh-huh.

12 Q. All right. Some discomfort associated with that?

13 A. Yes.

14 Q. All right.

15 A. Wet clothes associated with that.

16 Q. I understand, I have two children myself.

17 After you were taken out and went through the
18 paperwork part of it, what occurred then?

19 A. I got to go to -- out to where my children were.

20 Q. And where were your children?

21 A. They were in a -- just that hall, that little -- I
22 don't know what it would be called, just a little hallway as
23 you come in.

24 Q. Just waiting out there for you?

25 A. Uh-huh.

1 Q. And had they -- had they been up there while you
2 were --

3 A. Most of the time.

4 Q. -- in the holding cell?

5 A. They did go to McDonald's to get something to eat,
6 but my son didn't want to leave, so . . . [weeping].

7 Q. Okay. And then you were released and went on home?

8 A. Yes, my parents took me home.

9 Q. All right. Did your parents come in and pay your
10 bail, was that the deal?

11 A. I can't remember who paid it, one of our parents
12 paid it.

13 Q. All right. And how about your husband, did they
14 bail him out too or did they leave him there?

15 A. They paid, but it took him -- I don't know what
16 happened, but he didn't get to leave when I did, it was
17 several hours later.

18 Q. And being processed out of the male's side of the
19 jail?

20 A. I guess so, yes, and I believe, you know, that my
21 screaming daughter out there probably had something to do
22 with it.

23 Q. With being processed out fast?

24 A. Faster than him anyway.

25 Q. Okay. Were the --

1 between the county and him?

2 A. Afterwards he told me some things.

3 Q. Before that, had he told you about the contact or
4 the letters or any of that?

5 A. I saw one letter, I saw that letter.

6 Q. When did you see that?

7 A. I cannot remember for the life of me.

8 Q. Was it after the arrest?

9 A. No, I saw it before the arrest.

10 Q. Did you pick up the phone and call the county?

11 A. No.

12 Q. Call Mr. Thornton?

13 A. No, because --

14 Q. You were letting your husband handle it, weren't
15 you?

16 A. Yes, I was, and what I understood from Mr. Simmons
17 also, you know, everything was being done, you know, with
18 permission, I mean that they were doing everything, you know,
19 informing the county of what they were doing and had
20 permission.

21 Q. Now who is Mr. Simmons?

22 A. He is the man I mentioned earlier that worked along
23 with my husband.

24 Q. All right. Did you talk to him about things?

25 A. No, I didn't really talk to him, I just, you know,

1 Q. (Moving head up and down)

2 A. Yes, but I don't know that jail would be the, you
3 know, the answer.

4 Q. Well, --

5 A. Action, yes, but I don't know that that would be
6 the action.

7 Q. It's certainly within their rights to do whatever
8 was within the limit of the law, correct?

9 A. It depends on what they would find.

10 Q. How often did you go out to the property?

11 A. Very, very rarely.

12 Q. So in terms of you actually seeing the effluent
13 that surfaced, did you ever see that?

14 A. No, I never did.

15 Q. Did you ever see the hoses going from -- if the
16 evidence establishes that this liquid that appears in this
17 picture and some of the others is effluent, if you were the
18 parent of the children that had their toys sitting in this
19 stuff and were playing in it, how would you feel about the
20 landowners?

21 A. I would be upset, but my children wouldn't be
22 playing in it, their toys wouldn't be in it either, but I
23 would be upset if that's what that was.

24 Q. Now I think you had talked about some of the
25 problems that occurred out there at the mobile home park.

1 A. To begin with, no.

2 Q. But by the time the houses started moving in out
3 there, were y'all pretty well hamstrung financially?

4 A. No, we were really fine for quite some time. I
5 mean we weren't rich by any means, but we had help, we had
6 support from our parents because, you know, they knew that
7 this was something that we really wanted to do and it would
8 work, and I mean we had some unfortunate problems, but . . .

9 Q. Well, and I guess what I'm getting at, and you can
10 tell me if I'm right or if I'm wrong -- and I tell you this,
11 if y'all had the money necessary to have corrected these
12 problems and you didn't do it, then I would find that very
13 upsetting.

14 A. Right. No, this was after the fact, our financier
15 pulled out on us because he got scared.

16 Q. When did he pull out?

17 A. I'm not sure of the exact date, he would say -- you
18 know, we explained the situation and it was really, you know,
19 important we had to do this, we had to do this, and he would
20 put us off a week, and he'd put us off another week
21 [weeping]. And then finally, you know, a few months down the
22 road, he said I just, you know, I'm scared, I don't want to
23 do this, and so here we are stuck with this, you know, he's
24 promised us this and we've promised people things and this is
25 what we ended up with, yeah.

1 Q. Who was your financier?

2 A. Mr. Singleton.

3 Q. And so I guess when y'all found out how much the
4 wetlands septic system was going to be, and it was apparently
5 outlandish financially --

6 A. Oh, yeah, it was unreal, so we went to Mr.
7 Singleton.

8 Q. And told him I guess what that problem was and that
9 y'all would have to do something else?

10 A. And he agreed.

11 Q. And then I guess initially he provided some
12 financing for it?

13 A. Uh-huh.

14 Q. I'm sorry, you have to answer verbally.

15 A. I'm sorry. Yes.

16 Q. And then as the problems developed, did he just say
17 sorry, I'm not going to finance you anymore, is that right?

18 A. Basically.

19 Q. Okay. And by that time, y'all had made promises to
20 the people who were leasing from you?

21 A. Yes.

22 Q. Made promises about how you were going to clean up
23 with the situation, fix up the septic system, right?

24 A. Yes.

25 Q. And made promises, for that matter, to Mr. Thornton

1 and Nacogdoches County?

2 A. From what I understand.

3 Q. And because Mr. Singleton backed out on y'all
4 financially, you weren't able to honor those promises, were
5 you?

6 A. Not for a while. We got another person to finance,
7 you know, explained the situation to him and he helped us
8 out.

9 Q. When did that person get involved?

10 A. Oh, I'm terrible with dates, I'm sorry.

11 Q. That's okay, you don't have to give me an exact
12 date. In fact, if you want to say it was before the arrest

13 --

14 A. I'm trying to remember if it was before. I think
15 -- yes, I think we started to him before, but I don't think
16 it was final. I don't know.

17 Q. Well, your best recollection, did the new finance
18 person not come in until after the arrest?

19 A. I cannot -- I really can't remember. I remember I
20 believe we signed papers in January, but I think we had
21 started before, but --

22 Q. Started discussions --

23 A. -- I could be wrong on that, --

24 Q. -- with them?

25 A. -- I'm not sure.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

TOMMIE WELLS, JR. AND
CHERYL WELLS

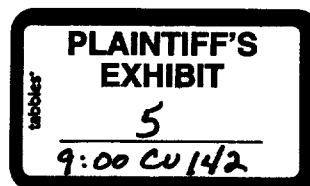
VS.

CA NO. 9:00CV142

NACOGDOCHES COUNTY, TEXAS
AND EDWARD THORNTON

ORAL DEPOSITION OF
EDWARD THORNTON
OCTOBER 18, 2000

ORAL DEPOSITION OF EDWARD THORNTON, produced as a
witness duly sworn by me at the instance of the PLAINTIFFS,
taken in the above styled and numbered cause on the 18th day
of September, 2000 from 10:40 a.m. to 4:30 p.m., before DEENA
L. WHITFIELD, Certified Shorthand Reporter No. 3241 in and
for the State of Texas, reported by oral stenography method
at the Stuckey, Garrigan & Castetter Law Offices, 2803 C
North Street, Nacogdoches, Texas; taken pursuant to Notice
and in compliance with the Federal Rules of Civil Procedure
and Local Rules by the Eastern District of Texas; signature
required.



EDWARD THORNTON

1 Q. You did not. So would it be your testimony then
2 that any arrest warrant or complaint that has your name on it
3 is a forgery, you never signed any complaint?

4 A. I filed a complaint against --

5 Q. Go ahead.

6 A. --- the Wells for sewage being dumped, but I cannot
7 arrest -- cannot issue arrest warrant --

8 Q. Well, I understand, you had to go to the Court to
9 get the arrest warrant issued?

10 A. No, I did not get an arrest warrant. I have no
11 authority to do that.

12 Q. Who got the arrest warrant?

13 A. That would be up to the JP, he has the authority to
14 do that.

15 Q. So you're telling this -- you're telling this jury
16 -- or are you telling this jury that you had nothing to do
17 with getting Tommie and Cheryl Wells arrested?

18 A. No, I did not.

19 Q. Okay. Let me direct your attention to what on the
20 bottom has been -- it's marked Plaintiff's Exhibit 6, Bates
21 number nine. Do you see that document?

22 A. (No response)

23 Q. You're not looking at the -- it's not Bates number
24 nine.

25 MR. DAVIS: Hold on just a second, let us look

1 and say hey, prepare this complaint for me, did he?

2 A. No, no, sir.

3 Q. This was Edward Thornton's doing?

4 A. Yes, sir.

5 Q. But you were doing that in your capacity, --

6 A. Yes.

7 Q. -- in your capacity as the head of the Nacogdoches
8 -- what's that called again?

9 A. Health Environmental office.

10 Q. Okay. In terms of the Nacogdoches Health and
11 Environmental office, you are the top dog there, the head
12 guy, correct?

13 A. I work for the Commissioner's Court.

14 Q. Well, and who runs the office?

15 A. I run the office, yes, sir, correct.

16 Q. Did somebody at the Commissioner's Court tell you
17 to fill out this --

18 A. No, sir.

19 Q. -- what's been marked as --

20 A. No, sir.

21 Q. Did anybody -- did you do -- did the Commissioner's
22 Court in your capacity as the administrator, --

23 A. Yes.

24 Q. -- you understand what administrator is, --

25 A. Yes, sir.

1 Q. -- don't you?

2 A. Yes, sir.

3 Q. You did that in your capacity as the administrator,
4 did you not?

5 A. Yes.

6 Q. And that full authority to do that had been
7 delegated to you --

8 A. Yes.

9 Q. -- by Commissioner's Court, had it not?

10 A. You are correct.

11 Q. And in fact, you didn't even run this by anybody in
12 Commissioner's --

13 A. No, sir.

14 Q. -- Court, did you?

15 A. No, sir.

16 Q. So that was Ed Thornton --

17 A. Yes.

18 Q. -- and Ed Thornton alone's doing, this Defendant's
19 Exhibit 1?

20 A. Yes.

21 Q. And then you say, did and there unlawfully and
22 willfully discharge sewer, chapter 341.014.

23 A. Yes, sir.

24 Q. Is it you that either wrote that in or had that --

25 A. Yes.

1 Q. You didn't know that people could be arrested --

2 A. They don't always get arrested.

3 Q. Well, did you understand that sometimes you file a
4 complaint, people can get arrested?

5 A. That could be.

6 Q. Pardon? Did you know that back on November the 8th
7 of 1999 when you filed the complaint that there was a chance
8 that Cheryl and her husband would be arrested?

9 A. There is always a chance, yes.

10 Q. Well, I mean what did -- for what purpose did you
11 file the complaint?

12 A. To get the sewage cleaned up, to stop the
13 discharge.

14 Q. Did you ever tell Judge -- what's the Judge's name?

15 A. Hubert Johnson.

16 Q. Have you filed complaints in Hubert Johnson's court
17 in the past?

18 A. Yes.

19 Q. On one occasion or many occasions?

20 A. I think with his court, no, this is the first
21 complaint I've had to file in his court.

22 Q. Okay. How long have you been the boss out there?

23 A. About six years.

24 Q. Okay. And in this six year period of time, this is
25 the very first criminal complaint that you ever filed in

1 A. Just let me think a second. When I filed it, I
2 knew there was a -- it was criminal and civil.

3 Q. Okay.

4 A. On this one here, it's --

5 Q. Defendant's Exhibit 1's the one we're talking about
6 now?

7 A. Yes.

8 Q. Sometimes you file civil complaints, correct?

9 A. Correct.

10 Q. Sometimes you file criminal complaints, correct?

11 A. Yes.

12 Q. And you know the difference, correct?

13 A. If the law states it, yes.

14 Q. And on this particular occasion when you filed
15 what's been marked as Defendant's Exhibit 1, you knew that
16 you were filing both a criminal and a civil complaint?

17 A. No, I'm not sure I understand your question here.

18 Q. All right. When you filed Defendant's Exhibit 1,
19 you knew it was a criminal complaint?

20 A. Yes, it is a criminal complaint.

21 Q. Okay. And you knew that?

22 A. Yes.

23 Q. And you knew that when you filed criminal
24 complaints, people get arrested?

25 A. No, I do not.

1 Q. -- provisions of the statute, didn't you?

2 A. Yes.

3 Q. You knew that you had filed criminal complaints
4 before under this same or similar criminal statute, didn't
5 you?

6 A. Yes.

7 Q. And you knew that when you filed the criminal
8 complaints before, sometimes people got arrested?

9 A. Yes.

10 Q. They had -- you didn't ask for any civil relief at
11 all when you filed your criminal complaint, did you?

12 A. Please explain civil relief.

13 Q. You don't know what civil relief is?

14 A. No, I'm asking.

15 Q. They had -- did you -- when you filed this
16 Defendant's Exhibit 1, the criminal complaint, were you
17 trying to file anything in the whole wide world other than a
18 criminal complaint

19 A. On this one complaint?

20 Q. Yes, sir.

21 A. No.

22 Q. All right. So at least with regard to Defendant's
23 Exhibit 1, I think that we may be able to get it clean, be in
24 agreement --

25 A. Yes.

1 filed one of these criminal complaints was that Elizabeth
2 Dillon was picked up by the sheriff's department and taken to
3 the judge, in front of the judge, is that correct?

4 A. That is correct, what I understood after.

5 Q. Okay, after. So after -- I assume that you figured
6 this Tommie Wells' situation would be handled the same way?

7 A. It would be so.

8 Q. Okay. Specifically what you thought would happen
9 when you filed the criminal complaint that has been marked by
10 our very able court reporter as Exhibit No. 1 to your
11 testimony, what you thought would happen was that the sheriff
12 would go and pick Tommie Wells up, arrest him, and take him
13 before the judge because that's what had happened before,
14 correct?

15 A. Correct.

16 Q. And that's what you wanted to happen, --

17 A. No, sir.

18 Q. -- that's the reason that you -- now you filed the
19 complaint --

20 A. Yes.

21 Q. -- and understood that that would happen, but
22 that's not what you wanted to happen?

23 A. I did not want it to happen, no, sir.

24 MR. DAVIS: Do you understand that they can
25 also be summoned before the judge? The judge makes the

1 Nac Village.

2 Q. Duh.

3 MR. DAVIS: Curtis, if you're going to do that
4 type of thing, then we'll just cancel the deposition. I
5 treated your client with respect, I expect the same treatment
6 from you. And when my client is answering a question, it's
7 entirely improper of you to make comments like that before he
8 has finished his answer. It's entirely improper of you to
9 make comments like that period, and I truly will walk out of
10 here.

11 Q. (BY MR. STUCKEY) Okay, finish your answer.

12 A. Yes, sir. Tommie and Cheryl Wells are both the
13 owner of the property. As owners of the property, they are
14 both responsible, so she is as guilty as he.

15 Q. Now answer my question.

16 A. Yes, sir.

17 MR. DAVIS: He did.

18 MR. STUCKEY: Read the question back, the last
19 question that I asked.

20 (Last question and answer played back)

21 Q. I understand that it is your position that Cheryl
22 could be hauled off to jail and is just as guilty as Tommie
23 because she is the co-owner of the property, of the land, is
24 that correct?

25 A. That is correct.

1 Q. But that wasn't really the question that I asked,
2 sir. The question that I asked was do you have any evidence
3 from any source that on December the 10th of 1999 that Cheryl
4 Wells did anything wrong?

5 A. As I stated, the complaints were filed and she is a
6 landowner, she shares that responsibility with her husband,
7 she makes decisions, she's a CEO of the company.

8 Q. When did you first learn that Cheryl was the CEO of
9 the company?

10 A. Found that out yesterday.

11 Q. Okay. Had anybody in the whole wide world ever
12 told you that Cheryl was the CEO of any company on or before
13 December the 10th of 1999?

14 A. No, sir.

15 Q. Did you know anything about Tommie Wells'
16 corporation or Cheryl and Tommie Wells' corporation?

17 A. Yes.

18 Q. Okay. What did you know about that?

19 A. What I knew first was Tommie Wells had informed us
20 that he was the owner, that we did not need to bother his
21 wife, he was the sole owner of the property.

22 Q. Okay. Of the land?

23 A. Of the land.

24 Q. Okay.

25 A. That's the reason all things were filed against

1 was trying -- did they tell you about them being
2 fingerprinted and mug shotted?

3 A. No, sir.

4 Q. Tell the jury about the broken toilet during the
5 week of I guess it would be December the 3rd of 1999, the
6 flooding out there.

7 A. At Nac Village?

8 Q. Yes, sir.

9 A. I'm not aware of that.

10 Q. Who is Jack Ford?

11 A. I can't recall the name, sir, there's been so many
12 out there.

13 Q. Do you recall a tenant named Jack Ford whose
14 commode broke and flooded the area where they went trying to
15 dry it out on or about December the -- in early December of
16 1999?

17 A. I don't have recollection of that.

18 Q. What are you referring to?

19 A. Notes that I -- what do you call those things, --

20 MR. DAVIS: Your disclosures.

21 A. Disclosures.

22 Q. All right. Are they disclosures --

23 MR. STUCKEY: Have you given me all this,
24 Robert?

25 MR. DAVIS: (Moving head up and down)

1 Q. (BY MR. STUCKEY) Okay.

2 A. I don't recall. I remember Mr. Wells had had
3 numerous problems with tenants, either leaky toilets or
4 broken toilets, so whether that was one of the cases or not,
5 I could not tell you at this time.

6 Q. And leaky toilets or broken toilets aren't Mr.
7 Wells' fault?

8 A. I would say not.

9 Q. Okay. They had -- I started to ask you and you
10 started to tell me that --

11 (Mr. Stuckey leaves room and returns)

12 Q. -- you started to tell me how many times you had
13 met -- that you'd met Tommie Wells several times after July
14 of 1998, between then and the day of his arrest, correct?

15 A. Yes, we have met numerous of times.

16 Q. Would meet out at the trailer park on occasion?

17 A. Yes, sir.

18 Q. Would meet in your offices on occasion?

19 A. Yes.

20 Q. And where are your offices?

21 A. Nacogdoches County Courthouse.

22 Q. On which floor?

23 A. First floor, Suite 112.

24 Q. How many people are you the boss of?

25 A. We have three in our office and two janitors.

1 Q. Okay.

2 A. But if Mr. Wells came into the office, we were
3 usually both there.

4 Q. Okay. And what about when you went to the trailer
5 park, you would both go too?

6 A. No, sir, not always.

7 Q. Some of the times you'd meet him there and some of
8 the times Mr. Sarrano would meet him there?

9 A. Yes.

10 Q. And that would be just whoever had time to do it?

11 A. Yes, basically.

12 Q. All right. Now during this 18 months -- from July,
13 17 month period of time that you're working with Tommie, you
14 never had any meetings with Mrs. Wells, did you?

15 A. No, sir, I did not.

16 Q. Never a time?

17 A. No, sir.

18 Q. There was never a time from July of 1998 until this
19 lady was hauled off to jail in December of 1999 when you got
20 on the phone and said look, Ms. Cheryl, these are the
21 problems out here? You never did anything like that, did
22 you?

23 A. No, sir, I never talked to her personally.

24 Q. And Mr. Serrano never did either, did he?

25 A. No, sir.

1 A. Yes.

2 Q. Husband's and wives always own the land together,
3 right?

4 MR. DAVIS: Well, no.

5 MR. STUCKEY: Well, no, but I thought they
6 did, but that don't mean nothing.

7 Q. (BY MR. STUCKEY) All right. In any event, in any
8 event, let me back up, let me back up. You said that you
9 learned yesterday that she was the CEO. In terms of your
10 dealings with the trailer park, was there ever any doubt in
11 your mind who was calling the shots in terms of the trailer
12 park?

13 A. No, sir, it was not.

14 Q. And who was calling the shots?

15 A. Mr. Wells.

16 Q. Mr. Wells. And when you say Mr. Wells, you're
17 referring to Tommie Wells?

18 A. Tommie Wells.

19 Q. Did you ever have any evidence from any source that
20 Mrs. Wells was calling any of the shots?

21 A. No, sir.

22 Q. Because I guess if she had been the person who you
23 thought for even one nano-second was calling any of the
24 shots, you would have talked to Mrs. Wells, correct?

25 A. Yes.

1 A. Correct.

2 Q. I mean during your tenure, you said you've only
3 filed criminal charges outside of against the Wells only one
4 time before that you could remember, correct?

5 A. Yes.

6 Q. And that's not -- there's been more than one time I
7 am sure during your experience given the soils in East Texas
8 particularly when you could have filed charges if you had
9 wanted to?

10 A. Yes.

11 Q. Now with regard -- and of course, the
12 Commissioner's Court delegated to you full authority to make
13 those decisions, correct?

14 A. Correct.

15 Q. Based on your good judgement and discretion,
16 correct?

17 A. Correct.

18 Q. Now on November the 8th of 1999 for whatever
19 reason, and we'll go back to that set of charges in a minute,
20 but you chose on that occasion to file charges against both
21 Tommie and Cheryl Wells, correct?

22 A. Correct.

23 Q. Fast forwarding to December the 10th, a little over
24 a month later, you chose to file criminal charges only
25 against Tommie Wells, correct?

1 Q. Administrative?

2 A. Yes, sir.

3 Q. Do you know when, if ever, section 285.58(a)(6) was
4 repealed?

5 A. No, sir, I do not.

6 Q. In any event, are we in agreement that you don't
7 have -- except for being the landowner, you never had any
8 evidence that Cheryl was guilty of any of these offenses?

9 A. No, sir.

10 Q. She was just the landowner?

11 A. Correct.

12 Q. And I guess, of course, that in using your good
13 judgement and discretion the same way that you've told us,
14 that you didn't file charges in every case where there was a
15 criminal violation exercising your good judgement and
16 discretion, correct?

17 A. Correct.

18 Q. I guess if you chose to in those cases where you
19 filed criminal charges, you can file them against one person
20 and not the other, correct?

21 A. Correct.

22 Q. For example, you chose to do that in December the
23 10th of 1999, correct?

24 A. Um, November 8th we did both.

25 Q. Right. November the 8th, you chose to file them on

1 both?

2 A. Correct.

3 Q. And on December the 10th, you chose to file against
4 only one?

5 A. Correct.

6 Q. So it needs to be made clear to the jury that just
7 because you're a landowner doesn't automatically mean that
8 the head of the Nacogdoches Environmental Services is going
9 to file a criminal complaint on you?

10 A. No, not just because you're a landowner, no.

11 Q. Okay. As a matter of fact, can you ever remember
12 filing a criminal complaint against anybody else from the
13 beginning of time through today simply because they were a
14 landowner where you felt like there were criminal violations
15 occurring on the property?

16 A. Once, she was the homeowner, landowner and
17 homeowner.

18 Q. Okay. She was both?

19 A. Yes.

20 Q. But it was also her -- her tank that was in
21 dispute, wasn't it?

22 A. Correct.

23 Q. So we don't have -- I mean that situation's in no
24 way analogous to Ms. Cheryl's situation, is it?

25 A. Yes.

1 Q. Okay. And so at least on November the 8th of 2000,
2 the date that you filed the charges, two things happened,
3 okay?

4 A. Correct.

5 Q. Number one, you received the complaint about the
6 improperly -- what do you call it?

7 A. A new trailer house being moved in.

8 Q. -- a new trailer without permitted.

9 A. Well, it was just being moved in, we didn't know
10 where it was going.

11 Q. But when you got out there, you found out that was
12 no problem?

13 A. Correct.

14 Q. Okay. And then Benny told you that he also saw a
15 hose with effluent coming out of it?

16 A. Correct.

17 Q. And that he told Tommie this is it?

18 A. Correct.

19 Q. -- no more patience, no chance to fix, no nothing,
20 this is it, in effect?

21 A. Correct.

22 Q. Had there ever been any complaint -- first of all,
23 had any tenant ever complained to anybody in your agency
24 about that pump?

25 A. Not about the pump --

1 A. I asked him, I said what is wrong with the
2 complaints that we filed, and he said well, there's some
3 discrepancies, there's -- but he never would give me a
4 answer.

5 Q. Okay. So you're telling this jury under oath that
6 at some point in time, Bryan Davis, the state's attorney,
7 county attorney Bryan Davis told you that the charges were
8 going to have to be dismissed? In substance.

9 A. He said we may have to drop them.

10 Q. Okay. Well, and you understand we may --

11 A. Yes.

12 Q. -- have to drop them, what that means? What,
13 they're going to be dismissed?

14 A. More than likely.

15 Q. And in fact, that's what happened?

16 A. Yes, at which time I do not know.

17 Q. And Bryan told you that the reason that the
18 complaints were going to have to be dismissed is because they
19 were deficient, there were problems with them?

20 A. That's correct.

21 Q. But he would never tell you --

22 A. No, sir.

23 Q. -- what those problems were? Did you ask him what
24 those problems were?

25 A. Yes.

1 Q. And what would he say?

2 A. Well, there's just some problems, I'll get with you
3 some time next week.

4 Q. Okay. And did he ever do that?

5 A. No, sir.

6 Q. Were you in favor of dismissing the charges?

7 A. No, sir.

8 Q. Were you opposed to it?

9 A. Yes, sir.

10 Q. Okay. So earlier -- and I wanted to make that
11 clear, and go way back to the very first of your deposition,
12 but the fact of the matter is that you filed these charges
13 against this nice lady and her husband, correct?

14 A. Correct.

15 Q. As a result of those charges, they were taken to
16 jail, correct?

17 A. Correct, so I'm understanding.

18 Q. And even after being taken to jail and being told
19 by the state's attorney that the charges are no good, they're
20 deficient, you still wanted the state to press the charges,
21 didn't you?

22 A. We had problems, I wanted it cleaned up, yes. I
23 didn't know what laws to use, that's why we contacted Bryan
24 Holt Davis again and said what do we need to do. He went out
25 there with us, looked at the situation --

1 weren't counting days.

2 A. Yes.

3 Q. So did you glean from that that Tommie did not want
4 his wife involved in this fiasco?

5 A. No, I respected that part.

6 Q. Okay. So you admired Tommie for wanting to keep
7 his wife out of it?

8 A. Correct.

9 Q. At the same time, sometime at least by November the
10 8th of 2000, you had decided --

11 MR. DAVIS: 1999.

12 Q. (BY MR. STUCKEY) I mean 1999, I'm sorry. You had
13 decided in your own mind that you were going to file the
14 charges on Cheryl, correct?

15 A. Correct. May I explain?

16 Q. Did you ever --

17 MR. DAVIS: Sure, go ahead and finish your
18 answer.

19 A. This was a serious problem, but when he's pumping
20 it down out of a system without going through any treatment
21 of ground whatsoever, down. It was a deliberate act. You
22 know, something had to be done. We had gone over a year
23 trying to get this cleaned up, and this one thing, 165 has
24 been over and over and over again and he started pumping it
25 down. That's like running down the highway deliberately

1 Q. Wait a minute, I thought you said the deliberate
2 act was Tommie pumping the effluent, --

3 A. Correct.

4 Q. -- correct?

5 A. Yes, sir.

6 Q. Do you have any information from any source that
7 Cheryl knew anything at all about the pumping effluent based
8 on what you heard yesterday or any other time?

9 A. Like I say, I only know that she is the wife of
10 that man and she had means to know.

11 Q. Now answer my question.

12 A. Yes.

13 Q. Do you have any -- you have testified under oath
14 that Tommie told you to keep his wife out of it, correct?

15 A. He said he would like to keep his wife out of that,
16 yes.

17 Q. Do you have any information from any source that
18 Tommie ever told his wife or she knew anything at all about -

19 -

20 A. No, I do not have evidence.

21 Q. And you agree with me that whoever received the
22 March 20, 1999 letter could not tell from reading the letter,
23 Defendant's Exhibit 9, what the complaint was about?

24 A. Yes, they could tell it's about lot 165.

25 Q. But what about lot 165?

1 Q. Okay. Early 1999?

2 A. Yes.

3 Q. So it's your testimony that from early 1999 on when
4 you would call and try to get Tommie Wells, you wouldn't --
5 nobody would answer the phone?

6 A. Nobody would answer the phone.

7 Q. I had understood, I thought that up until November
8 the 8th of 1999 you were in regular contact with Mr. Wells?

9 A. Oh, yes, we could show up at the Naconiche Village,
10 within 15 minutes, Mr. Wells drove up.

11 Q. Okay.

12 A. I don't know how he knew, somebody was telling him,
13 but he showed up.

14 Q. Well, did you object to that?

15 A. No, sir.

16 Q. Okay. Did you ever -- do you know where Mr. Wells'
17 home is?

18 A. Yes.

19 Q. Did you ever go out and tell the Mrs.?

20 A. He showed up most of the time, so there was no
21 sense in --

22 Q. Okay. I mean the fact of the matter is that other
23 than you say mailing this letter that we've gone through in
24 some detail, you never made any effort to contact Cheryl
25 about the letter, did you?

1 A. No, we got with Mr. Wells and he would agree to fix
2 the problem.

3 Q. Did Mr. Wells appear to you, when problems would
4 come up, to be concerned about them?

5 A. Say again, please.

6 Q. Yeah, did Mr. Wells appear to you to be concerned
7 about the problems?

8 A. Yes, always concerned.

9 Q. Okay. And you don't fault him for that?

10 A. No, sir, I do not.

11 Q. You said that you understood he had some financial
12 difficulties.

13 A. He explained that to us.

14 Q. Okay. When did he explain that to you or did he
15 explain it to you on more than one occasion?

16 A. On more than one occasion, he explained to us that
17 he had -- he was trying to get more trailers in because he
18 could pay for the others, we said we can't allow that, the
19 systems need to be brought up to standards that you have.
20 But then I understand his thinking, but that does not fix the
21 problem.

22 Q. Okay. Tell the jury about the Ideal Trailer Park.

23 MR. DAVIS: The ideal trailer park?

24 MR. STUCKEY: The Ideal Trailer Park.

25 A. I feel the Ideal Trailer Park was owned by -- what

1 was his name?

2 MR. SERRANO: W.D. Weems.

3 A. Mr. Weems.

4 MR. DAVIS: You're talking about a real
5 trailer park?

6 THE WITNESS: Ideal Trailer Park.

7 MR. DAVIS: I thought you meant the ideal as
8 in what would be the perfect trailer park in your mind.

9 Q. (BY MR. STUCKEY) You know what I'm talking about,
10 don't you?

11 A. Correct.

12 MR. DAVIS: Cure world hunger.

13 Q. (BY MR. STUCKEY) That trailer park -- I mean there
14 are a number of trailer parks in Nacogdoches County that have
15 soil that transfers into sewage problems, correct?

16 A. Correct.

17 Q. And that's because a lot of the land in Nacogdoches
18 County is clay?

19 A. Correct.

20 Q. And tell the jury what it is about clay soil that
21 makes it harder to have effective --

22 A. Clay soil is the ideal cleanser of effluent, but it
23 will not perk very fast, which causes the problem of it
24 surfacing or backing up.

25 Q. Okay. Now the systems, the aerobic system that you

1 A. Yes.

2 Q. And you don't think Benny would say something like
3 that?

4 A. No, I do not think he would say that.

5 Q. As a matter of fact, if he did, he's gone, correct?

6 A. Correct.

7 Q. During the two years or over two years now that the
8 trailer park has been functioning, do you have a single
9 documented case of any illness?

10 A. I don't have it in my office, no.

11 Q. Okay. Well, does anybody else in your office have
12 it?

13 A. No, no, not in our office.

14 Q. Now I was asking you about the Ideal Trailer Park
15 and see if there are things that we can agree on. Is that --

16 MR. DAVIS: If this is a new area, can we take
17 a break?

18 MR. STUCKEY: Yeah, if you want to get gone
19 early, it's not going to happen if we keep taking breaks.

20 MR. DAVIS: Well, I've got to go to the
21 bathroom.

22 MR. STUCKEY: All right.

23 (Break from 3:35 p.m. to 3:40 p.m.)

24 Q. (BY MR. STUCKEY) Septic tank installers, as a
25 result of the business they're in work closely with your

1 here get contaminated.

2 Q. That's right, they get bad water in them?

3 A. Correct.

4 Q. And that's something that you want to stop?

5 A. Correct.

6 Q. And that poses a serious health problem?

7 A. Correct.

8 Q. Now there's no -- nobody has ever claimed that
9 anything that happened at the trailer park -- when I say the
10 trailer park, I'm referring to my client's trailer park now,
11 okay?

12 A. Okay.

13 Q. That anything that happened at that trailer park
14 ever contaminated any wells?

15 A. Any wells? No, I do not --

16 Q. That claim's not been --

17 A. No, sir.

18 Q. -- made, has it?

19 A. No, sir.

20 Q. That would be a serious problem?

21 A. Right, the only complaint -- well, no.

22 Q. Okay. The only complaint what?

23 A. We received concerning water was when a water line
24 was broke and we did have effluent surfacing close to that.

25 Q. But when you say a water line broke, --

1 A. No.

2 Q. -- would that be one of the -- well, would it be a
3 way to dry the area?

4 A. A illegal way, yes.

5 Q. Okay. When did you last test the effluent prior to
6 December the 10th of 1999?

7 A. We didn't.

8 Q. Okay. So at least are we in agreement that prior
9 to December the 10th of 1999, that is the date of my clients'
10 arrest, that the effluent out there at the trailer park, to
11 your knowledge, had never been tested?

12 A. Correct.

13 MR. DAVIS: Is it hot in here to you?

14 MR. STUCKEY: Tell them to turn the air
15 conditioner on. I don't know, I guess it is. They had --

16 MR. DAVIS: Of course, I am wearing a sweater.

17 Q. (BY MR. STUCKEY) Of course, you have the power to
18 get the effluent tested if you wanted to?

19 A. Correct.

20 Q. As a matter of fact, after these clients -- my
21 clients were arrested and hauled off to jail, you had the
22 effluent tested on how many occasions?

23 A. Three different occasions.

24 Q. Okay. When is the first time after my clients were
25 arrested and hauled off to jail that the effluent was tested?

1 deemed to be an inappropriate manner, that he shouldn't be
2 using the pump for that purpose?

3 A. Correct.

4 Q. And you had told Tommie before he was arrested that
5 some of his systems weren't set up right, correct?

6 A. Correct.

7 Q. Even though -- even though at the time of the
8 installation of all of his systems you had permitted those
9 systems?

10 A. Correct.

11 Q. Now do you see --

12 MR. DAVIS: He said all of the systems you

13 --

14 Q. (BY MR. STUCKEY) Do you see where --

15 MR. DAVIS: -- had permitted. Listen to the
16 question.

17 THE WITNESS: Yeah.

18 Q. (BY MR. STUCKEY) Do you see --

19 MR. STUCKEY: And I object to your constant
20 coaching, Robert, but I'm sure that she got those comments on
21 the record as well.

22 Q. (BY MR. STUCKEY) Do you agree with me that from
23 the victim's point of view, it could appear to them like you
24 were harassing them almost from the beginning?

25 A. No, sir.

1 A. When this started out in July of '98, he --

2 Q. Yeah, go ahead. I just want you to tell me when
3 you're done and I'll ask you another question for the record.

4 A. There was constructed wetlands in the process of
5 being designed. At that time, he was not going to put in but
6 a few trailer houses on an on-site waste water treatment
7 plants. When the constructed wetlands thing fell through, he
8 was going -- he was going to end up going over the 5,000
9 gallons.

10 Q. Are you finished, sir?

11 A. Yes, sir.

12 Q. At some point in time, did you tell Tommie Wells
13 that he was exceeding the 5,000 gallon limit or was about to
14 exceed the 5,000 gallon limit?

15 A. Yes.

16 Q. Are you the same person who did the permits that
17 added up to over 5,000 gallons?

18 A. They did not -- he had 11 permits to start out
19 with.

20 Q. Did you ever permit in excess of 5,000 gallons?

21 A. I'd have to count the permits, but there may be a
22 chance that we went over, yes.

23 Q. Okay. And when there may have been a chance that
24 we went over, yes, you're talking about the 5,000 gallons,
25 correct?

1 A. Yes, correct.

2 Q. And you say we went over the 5,000 gallons, that
3 was Mr. -- would you consider it to be reasonable for Mr.
4 Wells to rely on what you had told him?

5 A. He is the one who added extra trailers to those
6 systems, which would cause that to go way over 5,000 gallons
7 per day.

8 Q. Did your permits standing alone exceed 5,000
9 gallons a day, yes or no?

10 A. I do not know right now, I would have to check.

11 Q. Do you deny that they -- your permits exceeded
12 5,000 gallons a day?

13 A. I do not know.

14 Q. Do you admit that you first told -- well, when did
15 you first tell Tommie not to exceed 5,000 gallons?

16 A. When he was -- this is the question we answered
17 when you were gone. When he first started this, he was in
18 the process of getting a constructed wetlands that would
19 handle the whole piece of property through an engineer and
20 TNRCC. The engineer was running long on his time line, he
21 asked if he could put conventional systems in or put on-site
22 waste water systems in, I said yes, but you cannot go over
23 the 5,000 gallons per day. This was a temporary setup until
24 they got the constructed wetlands, and then he would tie it
25 to the constructed wetlands.

1 A. No, sir.

2 Q. Did you expect the court to rely on everything in
3 your complaint as being accurate? Did you expect the court
4 to rely on your complaint?

5 A. Yes.

6 Q. Do you agree that on December the 19th of -- 17th
7 of 1999 both Plaintiffs were arrested in front of their
8 children?

9 A. I did not know, I do now.

10 Q. And that they were fingerprinted and mug shotted?

11 A. As of yesterday, yes, I do.

12 Q. And that they stayed in jail until they were able
13 to post bond?

14 A. Yes, as of yesterday.

15 Q. Do you have any information from any source that
16 either of my Plaintiffs would have run off or fled the
17 jurisdiction if they had not been arrested?

18 A. No.

19 Q. Do you have any reason to believe that they would
20 have run off or fled the jurisdiction if they had not been
21 arrested?

22 A. No, sir.

23 Q. I think that you've -- do you of your own knowledge
24 know whether the arrest at all cost them any business?

25 A. No, I do not.

1 Q. And finally in terms of what you did in connection
2 with Mr. and Mrs. Wells, you didn't receive any supervision
3 from anybody else, you were the supervisor as opposed to the
4 supervisee?

5 A. (No response)

6 Q. You were the person -- there wasn't nobody
7 supervising you, if any supervising was going on, it was
8 being done by you?

9 A. I have supervision from TNRCC.

10 Q. Okay. So did you contact TRNCC when you filed the
11 charges?

12 A. Prior to, yes.

13 Q. How long prior to?

14 A. We had been keeping them abreast of this since -- I
15 don't know what time, but we have stayed with them on this
16 and asking their advice, what to do.

17 Q. Well, let's be more specific, sir. On November the
18 8th of 1999 when you say you decided to file the first set of
19 charges, are you with me?

20 A. Yes, I am.

21 Q. You didn't contact them on that date, did you?

22 A. Not on that date, but prior to, that's the reason
23 they said use that form.

24 Q. They had, okay. So they told you a form to use?

25 A. Correct.

IN THE JUSTICE COURT, PRECINCT NO. ONE
OF NACOGDOCHES COUNTY, TEXAS

STATE OF TEXAS

VS.

CHERYL WELLS

§
§
§
§
§


CAUSE NO. 99-12-2993

ORDER OF DISMISSAL

On this date came to be considered the Defendant's Motion for Dismissal and the Court, having considered the motion, together with any response thereto, finds that the same should be granted. Accordingly,

IT IS ORDERED that the Complaint in the above-referenced matter should be and is hereby dismissed.

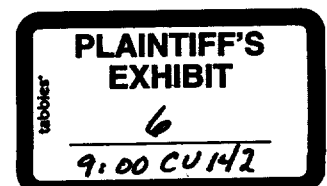
SO ORDERED this 2 day of May, 2000.


JUDGE PRESIDING

Received 05-09-00 10:05

From-409 639 3049

To-



IN THE JUSTICE COURT, PRECINCT NO. ONE
OF NACOGDOCHES COUNTY, TEXAS

STATE OF TEXAS

VS.

TOMMY WELLS

§
§
§
§
§

CAUSE NO. 99-12-2992

ORDER OF DISMISSAL

On this date came to be considered the Defendant's Motion for Dismissal and the Court, having considered the motion, together with any response thereto, finds that the same should be granted. Accordingly,

IT IS ORDERED that the Complaint in the above-referenced matter should be and is hereby dismissed.

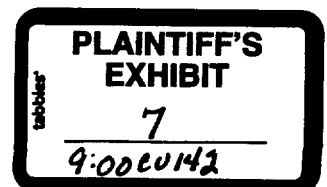
SO ORDERED this 2 day of May 2000.

Hubert Johnson
JUDGE PRESIDING

Received 05-09-00 10:05

From-409 639 3049

To-



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

1.	TOMMY WELLS, JR.	§	
	and	§	
2.	CHERYL WELLS	§	
		§	
	Plaintiff	§	
		§	
v.		§	CIVIL ACTION NO. 9:00CV142
		§	
1.	NACOGDOCHES COUNTY, TEXAS	§	JUDGE COBB
	and	§	
2.	EDWARD THORNTON	§	
		§	
	Defendants	§	

AFFIDAVIT OF DANNY SIMMONS

Comes now Affiant Danny Simmons who being duly deposed upon his oath states as follows:

I

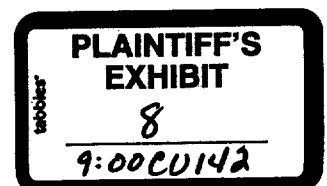
I am over 21 years of age, of sound mind, and otherwise competent to give this affidavit.

II

I am a friend of Tommy and Cheryl Wells. I am presently the Oaklawn Baptist Church Youth & Music Minister in Texarkana, Texas. I was a youth & music minister at Bethel Baptist Church in Appleby, Texas and Tommy and Cheryl attended the church. I was also owner/operator of a tree trimming business. Finally, I worked for Tommy Wells at the trailer park from the summer of 1998 through the summer of 1999.

III

Cheryl Wells had very little to do with the trailer park. The only time I saw her at all is when she would come and deliver messages to Tommy. I never saw her get out of the vehicle.



IV

I helped Tommy install the septic systems. I know that Ed Thornton knew we were installing the systems because he would come by and see us and we had Ed Thornton's permission to install the systems.

V

Ed Thornton knew that we did not have permits for some of the systems that we were installing.

VI

I was helping Tommy when Ed Thornton came by and saw us pumping water from a septic tank into the aerobic system. Ed Thornton asked what we were doing. We told him. Thornton told us that it was okay to do that until we got the new aerobic plant installed. We were to throw the hose away when finished.

VII

We did not have very many problems while I was working for Tommy. We did our best to promptly respond to the few complaints that we did have.


VIII

The soil at the trailer park was mostly clay. Water will stand on clay soil when it rains.

IX

I never saw Tommy do anything that he was told not to do in connection with the trailer park, as it pertains to septic systems.

Further affiant sayeth not.



DANNY SIMMONS

STATE OF TEXAS *

COUNTY OF Bowie *

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned Notary
Public on this the 7 day of November, 2001.




Notary Public in and for
Bowie County, Texas

My commission expires: 6-22-02

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

1.	TOMMY WELLS, JR.	\$	
	and	\$	
2.	CHERYL WELLS	\$	
		\$	
	Plaintiff	\$	
		\$	
v.		\$	CIVIL ACTION NO. 9:00CV142
		\$	
1.	NACOGDOCHES COUNTY, TEXAS	\$	JUDGE COBB
	and	\$	
2.	EDWARD THORNTON	\$	
		\$	
	Defendants	\$	

AFFIDAVIT OF MICHAEL PORTER

Comes now Affiant Michael Porter who being duly deposed upon his oath states as follows:

I

I am over 21 years of age and otherwise competent to give this affidavit. This affidavit is based on my personal knowledge.

II

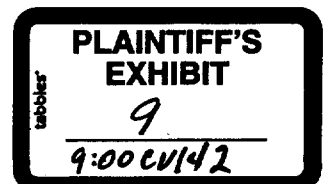
I was a tenant at the Naconiche Village Trailer Park from almost the beginning. I lived there from the summer of 1998 until I lost my job and had to move out earlier this year.

III

I know Tommy Wells very well. He is a good man. He ran a good trailer park. He was always receptive to people's needs.

IV

Tommy let me slide on my rent on several occasions when I got in a bind. I know that he also let other tenants slide on their rent. Basically, if you needed help Tommy would help.



V

Tommy corrected problems as soon as he learned about them. However, there were not very many problems.

VI

I know that sometimes areas of the trailer park would flood. This was sometimes caused by rain. Sometimes it was caused by tenants' clogged up toilets. Sometimes it was caused by tenants setting the timers and altering on the aerobic systems for too long.

VII

Cheryl never worked at the trailer park.

Further affiant sayeth not.

Michael F. Porter
MICHAEL PORTER

STATE OF TEXAS

COUNTY OF

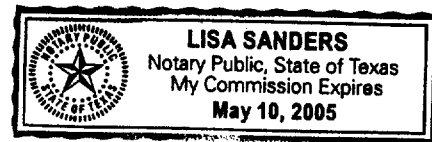
Neurologues

*
*
*

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned Notary
Public on this the 8th day of November, 2001.

Lisa Sanders
Notary Public in and for
Neurologues County, Texas

My commission expires: 5-10-05



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

1.	TOMMY WELLS, JR.	\$	
	and	\$	
2.	CHERYL WELLS	\$	
		\$	
	Plaintiff	\$	
		\$	
v.		\$	CIVIL ACTION NO. 9:00CV142
		\$	
1.	NACOGDOCHES COUNTY, TEXAS	\$	JUDGE COBB
	and	\$	
2.	EDWARD THORNTON	\$	
		\$	
	Defendants	\$	

ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendant having filed Defendant's Motion for Summary Judgment; plaintiff having filed Plaintiff's Response in Opposition to Defendants' Motion for Summary Judgment; it appearing that the motion is without merit; and the Court being otherwise sufficiently advised;

IT IS ORDERED that Defendants' Motion for Summary Judgment be, and hereby is, in all things DENIED.

SIGNED this ____ day of _____, 2001.

HONORABLE HOWELL COBB
UNITED STATES DISTRICT JUDGE